



Newsletter

Sharp View

July 2023

**SHARP &
TANNAN**

Assurance | Consulting | GRC | Taxation

Ahmedabad | Bengaluru | Chennai | Coimbatore | Delhi | Goa | **Mumbai** | Pune | Vadodara

JULY 2023

July is a typical monsoon season in India, but a good time to visit the drier areas like Rajasthan and Tamil Nadu. 1st July is celebrated as the Chartered Accountants' Day throughout India. The Institute of Chartered Accountants of India ('ICAI') completed its 75 years of existence in 2023.

Certain interesting facts about ICAI

ICAI inaugurated its 75th year logo on 1 July 2023, which depicts the shape of an 'Amrit Kalash'.

The total membership as on 1 April 2022 was 3,51,232.

CA G.P. Kapadia was the first and the longest serving president of ICAI.

ICAI has 30 overseas chapters (with presence in 47 cities) and 34 representative offices globally.

ICAI Vision 2030: To be world's leading accounting body, a regulator and developer of trusted and independent professionals with world class competencies in accounting, assurance, taxation, finance and business advisory services.

It has set the record for 'maximum number of students participation in 'Super Mega Career Counselling Programme' (held in October 2022), a programme for career guidance and increase in the awareness about ICAI and the chartered accountancy course.





CONSULTING

Industrial Disputes Act, 1947: Lay-off, retrenchment and closure

Labour law is a complex regulation. Industrial Disputes Act, 1947 is one such labour regulation containing various provisions like lay-offs, retrenchment, closure of the place of employment, etc. Ms. Abhilasha Rai (Vadodara office) brings out to you various aspects of this regulation in a lucid manner.

Introduction

Lay-offs, retrenchment, and closures are three circumstances addressed in the Industrial Disputes Act, 1947, that unfortunately lead to employees being terminated from their jobs. It is important to note that these situations do not arise as pressure tactics employed by employers; instead, they are instances where external factors force employers to cease providing employment to their workers. The Industrial Disputes Act has established precise definitions and regulations to govern these situations.

Lay-off

The definition of lay-off is given under Section 2(kkk) of the Industrial Disputes Act, 1947 ('the Act'). Lay-off means temporary unemployment of the workers due to lack of resources, raw materials or breakdown of machinery, or even due to natural calamity. The employer cannot offer work to the employees due to the aforesaid reasons. The workers should not have been retrenched and their names should exist in the muster rolls of the establishment. The employer must maintain the muster rolls which have to be entered by the workers whenever they are present for work. It works like an attendance sheet.

A lay-off occurs only in a continuing business and not if an industrial establishment is closed permanently. This does not end the employer-employee relationship. A person would be laid-off for an entire day or half a day if there is no work for him at a particular time.

As given under Section 25A of the Industrial Disputes Act, 1947 ('the Act'), lay-off compensation does not apply to the following kinds of establishments:

- An industrial establishment which has less than fifty workmen.
- Establishments involved in seasonal work.
- All the establishment to which Chapter VB of Industrial Disputes Act is applied.

Compensation under lay-off

A person who is laid off is entitled to compensation which is equivalent to 50% of his wages as given under section 25C of the Act. However, there are certain conditions for the compensation:

- A casual or a 'badli' worker is not entitled to such compensation. A worker who is employed in place of another worker for a short period of time is a 'badli' worker.
- The worker's name should be on the muster rolls.
- The worker should have completed one year of continuous service under the employer.

The compensation cannot be paid for more than 45 days. If the lay-off period exceeds the prescribed time then, the employer can continue paying the compensation or the employee can be retrenched. The lay-off compensation is provided to overcome unemployment pains that are not under the employer's control. A lay-off can be declared only in unforeseeable situations and not to victimise the worker.

Consulting

Industrial Disputes Act, 1947: Lay-off, retrenchment and closure

In certain situations mentioned below, a worker is not entitled to lay-off compensation:

- He/she refuses to accept alternative employment provided in the same establishment or another establishment of the same employer which carries the same wages and skills as the previous work.
- If he/she is not present at the establishment for work at least once in a day, he/she will not be entitled to the compensation
- Lay-off due to strikes.

In *Industrial Employees' Union, Kanpur v. J.K. Cotton Spinning and Weaving Mills Company*, it was held that offering unskilled work to a skilled worker does not amount to compensation. The workmen are entitled to compensation if and only if he/she has been in continuous service. Continuous service is defined as providing uninterrupted service (including interrupted service due to sickness or accidents) for at least a year.

Lay-off process

It is a formal process that involves obtaining prior permission from the government. Firstly, the employer has to apply for permission from the government or the appropriate authority stating the reason for the lay-off. A copy of the same is sent to the concerned worker. Once the application has been made, the authority shall make appropriate enquiries for the same. After considering all the factors, the government or the authority shall in writing grant or refuse to grant permission. A copy of the order shall be sent to the employer and the workmen.

Once the application has been made, if there is no response from the authority within 60 days, the permission shall be considered to be granted at the end of 60 days. The order by the government shall be final and binding to all for a year from the date of such order. A lay-off is considered illegal if no permission has been granted. The employer shall also apply for continuing the lay-off if he deems it necessary.

Retrenchment

Retrenchment is defined under Section 2(oo) of the Act. It is the termination of a portion of staff or labour force due to surplusage. Retrenchment could be for any reason. Retrenchment does not include the following:

- Voluntary retirement.
- Retirement due to age factors and terms of the contract.
- Termination due to continued sickness of the workman.

Section 25F talks about essential conditions to be fulfilled prior to retrenchment. These are:

- The workmen have to be given one month's written notice stating reasons for retrenchment and wages for the notice period.
- At the time of retrenchment, the worker has to be paid with compensation of fifteen days' wages.
- The notice should also be served on the appropriate government.

It was held in *Byram Pestonji Gariwala v. Union Bank of India and Others* that retrenchment can occur only when there is a labour surplus.

Retrenchment procedure

Section 25G of the Act mentions the procedure for retrenchment. A person who was employed most recently in a particular group of workmen will be dismissed in case of retrenchment. There are certain exceptions to this rule. If the contract between the employer and employee says otherwise, he cannot be retrenched. If a person's service and skills are necessary for the organisation, he could be retained for the interest of the business. Last in, the first out ('LIFO') system is followed in the retrenchment process. It starts with the newest employee and goes up the seniority scale.

Re-employment of a retrenched person

According to Section 25H of the Act, in the case of retrenchment of a workman if the employer plans to hire, then reemployment of the retrenched worker shall be considered before any other person. As mentioned in section 25Q, the employer is required to mandatorily seek permission from appropriate authorities prior to laying off and follow respective procedures for retrenching workmen in establishment. The employer shall be imprisoned for a month or fined INR 1,000 or both if he fails to follow the same.

Closure of the place of employment

The Act has no separate provision for closure. Later, the meaning and explanation of closure were expressly defined in a landmark Supreme Court Judgement Hariprasad Shiv Shankar Shukla v. A.D. Diwelker. The permanent closing down of a place of employment is closure defined under Section 2(cc) which was inserted by an amendment in 1982, where the employer shuts down the establishment permanently.

Procedure for closure

A set of procedures have to be followed to implement a closure plan. This procedure does not apply to construction work such as bridges, roads, dams, canals, and buildings. An application has to be made to the appropriate government for the closure of any establishments before ninety days of clearly stating the reason for the closure. The representatives of the workmen should be informed about the closure by providing a copy of the application. Once the application has been made, the Government shall make appropriate enquiries for the same. After considering all the factors, the government shall in writing grant or refuse permission for closure. Once the application has been made, if there is no response from the government within 60 days, the permission shall be considered to be granted at the end of 60 days. If the employer fails to adhere to the closure procedure, such closure shall be deemed to be illegal.

The government may allow the closing of establishments without prior notice or application under exceptional circumstances which is the death of the employer or accident in establishments. Once the establishment is about to be closed permanently, every workman is entitled to compensation which is corresponding to 15 days' average pay for every year completed.

Consulting

Industrial Disputes Act, 1947: Lay-off, retrenchment and closure

Appeals

Section 25(o) of the Act provides for appeal by an employer against the order of grant or rejection of permission of closure. This appeal should be filed within 30 days of the order.

Restarting of a closed undertaking

Any industrial establishment which comes under the purview of Chapter VB and was closed down before the announcement of the Amendment Act of 1976 can be restarted with the order from the respective government. This does not apply to establishments closed after 1976.

If the closure of the establishment is due to unavoidable situations outside the powers of the employer, there is an opportunity of restarting. This not only improves the well-being of society but also makes sure that the workmen get employed. Before passing an order of restarting an establishment the government should allow the employer and the employees to voice out their opinions on this matter. This order, which will be published in the Official Gazette, will state that the undertaking shall be restarted within a specified time period.

Conclusion

Employers tend to misuse their powers and discriminate against the workmen. Various laws regulate the employer-workman relationship. This is essential to control the employer's dominance over the employee. Even though there are separate provisions for these terms, there are certain loopholes in them. These are interpreted through precedents and landmark judgements.

Employers sometimes misuse their authority and engage in discriminatory practices against workers. To regulate the relationship between employers and workers, numerous laws have been established. This is crucial to mitigate the imbalance of power that employers may hold over employees. Despite the presence of specific provisions for addressing these issues, certain loopholes exist within the legal framework. These gaps are often interpreted and clarified through the use of precedents and significant court rulings, which help establish a clearer understanding of the law's intent and application.





GRC

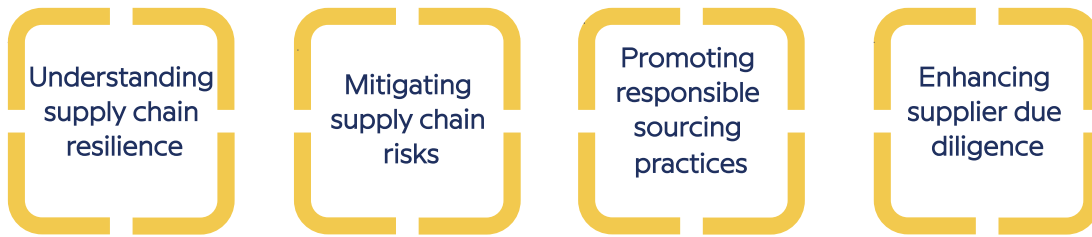
Supply chain resilience and sustainability in India: Strategies for success

In an era defined by globalization, organizations in India are increasingly recognizing the significance of building resilient and sustainable supply chains. The interplay of various factors such as geopolitical risks, natural disasters, and regulatory changes has underscored the need for proactive risk management and responsible sourcing practices. This article authored by Arnob Choudhuri (Pune Office) delves into the importance of resilient and sustainable supply chains in India and explores strategies to identify and mitigate supply chain risks, enhance supplier due diligence, and promote responsible sourcing. Through a combination of case studies and researched strategies, we aim to provide valuable insights to organizations seeking to optimize their supply chains for resilience and sustainability.

Introduction

In an increasingly interconnected and complex business landscape, supply chain resilience and sustainability have emerged as critical factors for organizations in India. The COVID-19 pandemic and other disruptive events have highlighted the vulnerabilities inherent in global supply chains, emphasizing the need for proactive risk management and responsible sourcing practices. This article explores the importance of building resilient and sustainable supply chains in India, along with strategies for identifying and mitigating supply chain risks, enhancing supplier due diligence, and promoting responsible sourcing practices.

Supply chain strategies



1. Understanding supply chain resilience

Supply chain resilience refers to the ability of a supply chain to anticipate, respond, and recover from disruptions effectively. In the Indian context, supply chain resilience has gained significant attention due to factors such as geopolitical risks, natural disasters, trade disruptions, and regulatory changes. Organizations need to assess vulnerabilities in their supply chains, develop contingency plans, and enhance flexibility to mitigate potential risks.

Case Study 1: Automobile industry - Building resilient supply chains

The Indian automobile industry, a key player in the global market, has recognized the importance of supply chain resilience. Companies have implemented strategies such as dual sourcing, geographic diversification, and robust inventory management to minimize the impact of disruptions. By adopting these measures, they have maintained business continuity and reduced supply chain vulnerabilities.

Case Study 2: Pharmaceutical sector - Ensuring supply chain resilience

The pharmaceutical sector in India, known as the "Pharmacy of the World," faces challenges related to supply chain disruptions. However, companies have implemented risk assessment frameworks, collaborated with suppliers, and established redundant production facilities to ensure uninterrupted access to essential medications during crises. These measures have enhanced the sector's supply chain resilience and safeguarded public health.

Supply chain resilience and sustainability in India: Strategies for success

2. Mitigating supply chain risks

Identifying and mitigating supply chain risks is crucial for ensuring operational stability and minimizing potential disruptions. Organizations should conduct comprehensive risk assessments, map out their supply chain networks, and identify critical vulnerabilities. Strategies such as supplier collaboration, demand forecasting, and real-time monitoring systems can help anticipate and mitigate risks effectively.

Case Study 3: Electronics industry - Collaborative risk mitigation

The Indian electronics industry faces risks associated with supply chain disruptions, including component shortages and trade uncertainties. To mitigate these risks, companies have implemented collaborative risk mitigation strategies. They maintain open lines of communication with suppliers, collaborate on demand planning, and establish alternative sourcing options. These measures have improved supply chain visibility, reduced lead times, and mitigated the impact of disruptions.

Case Study 4: E-commerce sector - Real-time monitoring and data analytics

The e-commerce sector in India relies heavily on efficient supply chains to meet customer expectations. Companies in this sector leverage real-time monitoring systems and data analytics to track and analyse supply chain performance. By monitoring key metrics such as delivery times, inventory levels, and customer feedback, e-commerce companies can identify potential bottlenecks, address them proactively, and enhance supply chain resilience.

3. Enhancing supplier due diligence

Supplier due diligence plays a vital role in ensuring sustainability and ethical practices throughout the supply chain. Organizations need to assess suppliers based on criteria such as financial stability, operational capabilities, environmental compliance, labour practices, and ethical standards. Implementing robust supplier evaluation processes, conducting audits, and promoting transparency are essential steps towards enhancing supplier due diligence.

Case study 5: Retail industry - Ethical supplier engagement

The Indian retail industry has recognized the importance of ethical supplier engagement. Leading retail companies have implemented supplier codes of conduct and comprehensive auditing programs to ensure adherence to sustainability and ethical practices. By engaging suppliers in ongoing dialogues and capacity-building initiatives, retailers foster responsible sourcing practices and promote sustainability throughout the supply chain.

Case Study 6: Manufacturing sector - Supplier collaboration for sustainability

Manufacturing companies in India are increasingly engaging in collaborative initiatives with suppliers to drive sustainability. By partnering with suppliers, organizations establish joint sustainability goals, share best practices, and promote resource-efficient manufacturing processes. These collaborations result in reduced environmental impact, improved supply chain transparency, and increased brand reputation.

Supply chain resilience and sustainability in India: Strategies for success

4. Promoting responsible sourcing practices

Responsible sourcing involves procuring goods and services in a manner that considers environmental, social, and ethical factors. Organizations should prioritize suppliers that adhere to sustainable practices, support local communities, and demonstrate corporate social responsibility. Implementing certification programs, engaging in supplier capacity building, and collaborating with industry associations can drive responsible sourcing initiatives.

Case study 7: Textile industry - Sustainable sourcing initiatives

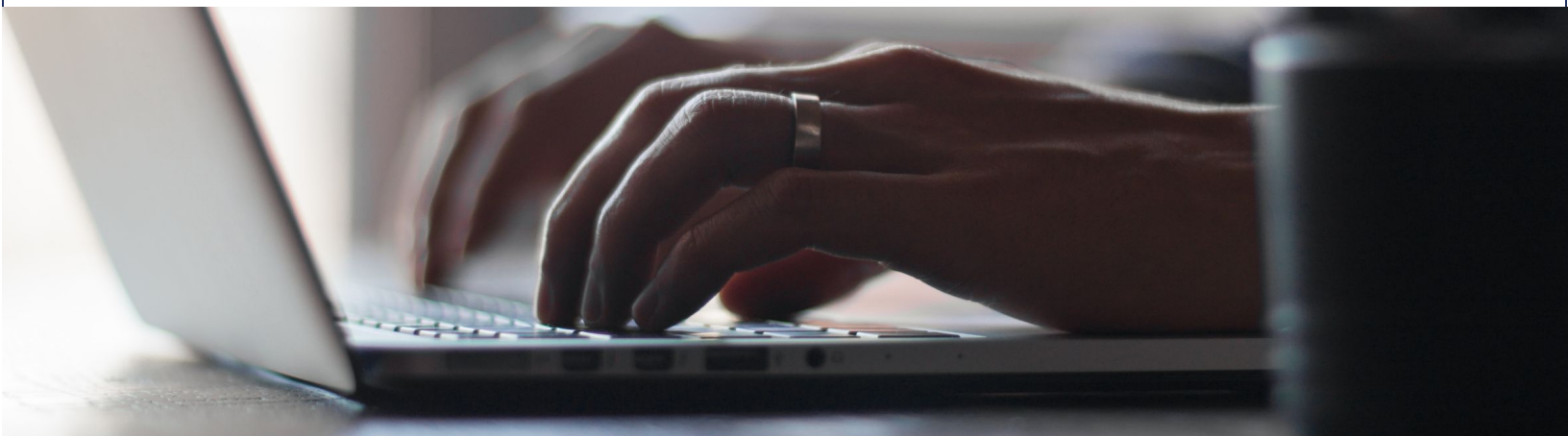
In India, the textile industry has witnessed a shift towards responsible sourcing practices. Leading textile companies have established comprehensive supplier codes of conduct, conducted audits to ensure compliance, and collaborated with suppliers to improve sustainability practices. By sourcing materials from certified suppliers, implementing sustainable production techniques, and supporting fair trade initiatives, the textile industry promotes responsible sourcing and enhances supply chain sustainability.

Case study 8: Food and beverage industry - Sustainable agriculture and supply chains

The Indian food and beverage industry has embraced sustainable sourcing practices. Companies have partnered with farmers to promote sustainable agriculture, implemented traceability systems to ensure product integrity, and supported initiatives for fair trade and responsible water usage. These efforts not only enhance supply chain sustainability but also meet consumer demand for ethically sourced products.

Conclusion

Building resilient and sustainable supply chains is crucial for organizations operating in India. By identifying and mitigating supply chain risks, enhancing supplier due diligence, and promoting responsible sourcing practices, businesses can minimize disruptions, improve operational efficiency, and contribute to long-term sustainability. The case studies presented across industries demonstrate the successful implementation of strategies and highlight the benefits of resilient and sustainable supply chains. As organizations continue to navigate complex supply chain landscapes, a proactive approach towards resilience and sustainability will be a key differentiator in ensuring business continuity and driving competitive advantage.





TAXATION

SC ruling on the distribution of freebies to medical practitioners by pharmaceutical companies

The honourable Supreme Court of India held that the freebies distributed by pharma companies as incentives to doctors/medical practitioners cannot be claimed as an expenditure under section 37(1) of the Income-tax Act, 1961. Ms. Neha Vikam (Mumbai office) presents the facts and the apex court ruling.

Taxation

SC ruling on the distribution of freebies to medical practitioners by pharmaceutical companies

Case name: M/s Apex Laboratories (P.) Ltd. vs Deputy Commissioner of Income Tax LTU

Date and reference of the ruling: 22 February 2022 ([2022] 442 ITR 1(SC))

Synopsis

The honourable Supreme Court of India ('SC') held that the expenditure incurred by a pharmaceutical company towards the distribution of incentives (or 'freebies') to doctors/medical practitioners cannot be claimed as expenditure under Section 37(1) of the Income-tax Act, 1961 ('the Act').

Facts

- The assessee-pharmaceutical company herein referred to as 'Apex' incurred expenditure towards gifting freebies to medical practitioners for promoting its health supplement and claimed the said expenses under section 37(1).
- The counsel for Apex argued that while medical practitioners were expressly prohibited from accepting freebies, no corresponding prohibition in the form of a binding norm was imposed on the pharmaceutical companies gifting them. In the absence of any express prohibition by law, Apex could not be denied the benefit of seeking exclusion of the expenditure incurred on the supply of such freebies under section 37(1).
- The revenue authorities submitted that while the act of pharmaceutical companies gifting freebies to medical practitioners for the promotion of their products may not be classified as an 'offence' under any statute, it was squarely covered within the scope of Explanation 1 to section 37(1) by use of the words 'prohibited by law', as it was specifically prohibited by the amended 2002 Regulations. While Apex could not be 'punished', it should not be allowed to benefit by claiming a deduction of expenditure on the freebies distributed.

Supreme Court analysis and judgement

- The Supreme Court ('SC') analysed that section 37 is a residuary provision. Any business or professional expenditure which does not ordinarily fall under sections 30-36, and which are not in the nature of capital expenditure or personal expenses, can claim the benefit of this exemption. But the same is not absolute. Explanation 1 to the provision provides that no deduction or allowance shall be made in respect of expenditure incurred by the taxpayer which is an offence, or which is prohibited by law.
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('2002 Regulations'), published in the Official Gazette on 14 December 2009, disallowed medical practitioners from accepting emoluments in the form of inter alia gifts, travel facilities, hospitality, cash or monetary grants. Acceptance of such freebies could result in a range of sanctions against the medical practitioners, from 'censure' for incentives received up to INR 5,000 to removal from the Indian Medical Register or State Medical Register for periods ranging from 3 months to 1 year.

Taxation

SC ruling on the distribution of freebies to medical practitioners by pharmaceutical companies

- The Central Board of Direct Tax ('CBDT') issued a circular dated 1 August 2012 wherein it set out that the claim of any expense incurred in providing freebies in violation of the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income-tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided the aforesaid freebies and claimed it as a deductible expense in its accounts against income. The CBDT circular being clarificatory, was in effect from the date of implementation of Regulation 6.8 of the 2002 Regulations, i.e., from 14 December 2009.
- The Court was of the opinion that such a narrow interpretation of Explanation 1 to section 37(1) defeats the purpose for which it was inserted, i.e., to disallow an assessee from claiming a tax benefit for its participation in an illegal activity. It is but logical that when acceptance of freebies is punishable by the MCI (the range of penalties and sanction extending to ban imposed on the medical practitioner), pharmaceutical companies cannot be granted the tax benefit for providing such freebies, and thereby (actively and with full knowledge) enabling the commission of the act which attracts such opprobrium. It further stated that Even if Apex's contention were to be accepted - that it did not indulge in any illegal activity by committing an offence, as there was no corresponding penal provision in the 2002 Regulations applicable to it - there is no doubt that its actions fell within the purview of "prohibited by law" in Explanation 1 to Section 37(1).
- The SC held that the doctors and pharmacists being complementary and supplementary to each other in the medical profession, a comprehensive view must be adopted to regulate their conduct in view of the contemporary statutory regimes and regulations. Therefore, denial of the tax benefit cannot be construed as penalizing the assessee pharmaceutical company. Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure.
- This Court also noticed that medical practitioners have a quasi-fiduciary relationship with their patients. A doctor's prescription is considered the final word on the medication to be availed by the patient, even if the cost of such medication is unaffordable or barely within the economic reach of the patient - such is the level of trust reposed in doctors. Therefore, it is a matter of great public importance and concern, when it is demonstrated that a doctor's prescription can be manipulated, and driven by the motive to avail the freebies offered to them by pharmaceutical companies, ranging from gifts such as gold coins, fridges and LCD TVs to funding international trips for vacations or to attend medical conferences. These freebies are technically not 'free' - the cost of supplying such freebies is usually factored into the drug, driving prices up, thus creating a perpetual publicly injurious cycle. The threat of prescribing medication that is significantly marked up, over effective generic counterparts in lieu of such a quid pro quo exchange was taken cognizance of by the Parliamentary Standing Committee on Health and Family Welfare.



Taxation

SC ruling on the distribution of freebies to medical practitioners by pharmaceutical companies

- Thus, pharmaceutical companies' gifting freebies to doctors, etc. is clearly 'prohibited by law', and not allowed to be claimed as a deduction under section 37(1). Doing so would wholly undermine public policy. The well-established principle of interpretation of taxing statutes - that they need to be interpreted strictly cannot sustain when it results in an absurdity contrary to the intentions of the Parliament.

To conclude

- The SC concluded that the prohibition on the part of doctors to accept freebies was also a prohibition on pharmaceutical companies. Accordingly, pharmaceutical companies would not be allowed to claim expenditure prohibited under the Medical Council Regulations u/s 37(1) of the Act. Hence the same is not to be allowed as a deduction.
- Explanation 3 was inserted to section 37 of The Finance Act 2022 wherein it was clarified that the expression 'expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law' includes and shall be deemed to have always included the expenditure incurred by an assessee to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person.
- In the above backdrop and in light of the SC decision as well as the amendment in the Finance Act 2022 it is clear that pharmaceutical companies cannot claim the expenditure on freebies given to medical practitioners.



Ahmedabad

A1/01, Safal Profitaire,
Corporate Road, Prahalad Nagar,
Ahmedabad 380015.
Phone: (91) (079) 2970 2082.

Bengaluru

103 & 203, Midford House, 1, Midford
Gardens, Off M.G. Road, Bengaluru 560 001.
Phone: (91) (80) 2555 0987.

Chennai

Parsn Manere, A Wing Third Floor,
602, Anna Salai, Chennai 600 006.
Phone: (91) (44) 2827 4368, 2822 9534.

Coimbatore

09, Verivada Street, Red Fields,
Puliakulam, Coimbatore – 641 045.
Phone: (91) (422) 356 6556.

Goa

Shop no: SF9, GHB Commercial-cum-
residential complex, Journalist Colony Road,
Alto Betim, Porvorim Berdez, Goa - 403251.
Phone: (91) 9820284854.

Learn more at: www.sharpandtannan.com

Social Media



Mumbai - 1

Ravindra Annexe, 194, Churchgate
Reclamation, Dinshaw Vachha Road,
Mumbai 400 020.
Phone: (91) (22) 2286 9900-48 / 2204 7722.

Mumbai - 2

87, Nariman Bhavan, 227 Nariman Point,
Mumbai 400 021.
Phone: (91) (22) 6153 7500 / 2202 2224 / 8857.

New Delhi

205-207, Ansal Tower 38, Nehru Place,
New Delhi 110 019.
Phone: (91) (11) 4103 2506, 4103 3506.

Pune

802, Lloyds Chambers, Dr. Ambedkar Road
Opp. Ambedkar Bhavan, Pune 411 011.
Phone: (91) (20) 2605 0802.

Vadodara

Aurum Complex, 8th Floor, West Wing,
Behind HP Vasna Petrol Pump,
Makrand Desai Road, Vadodara - 390007.
Phone: (91) 97268 95000 / 97278 95000.