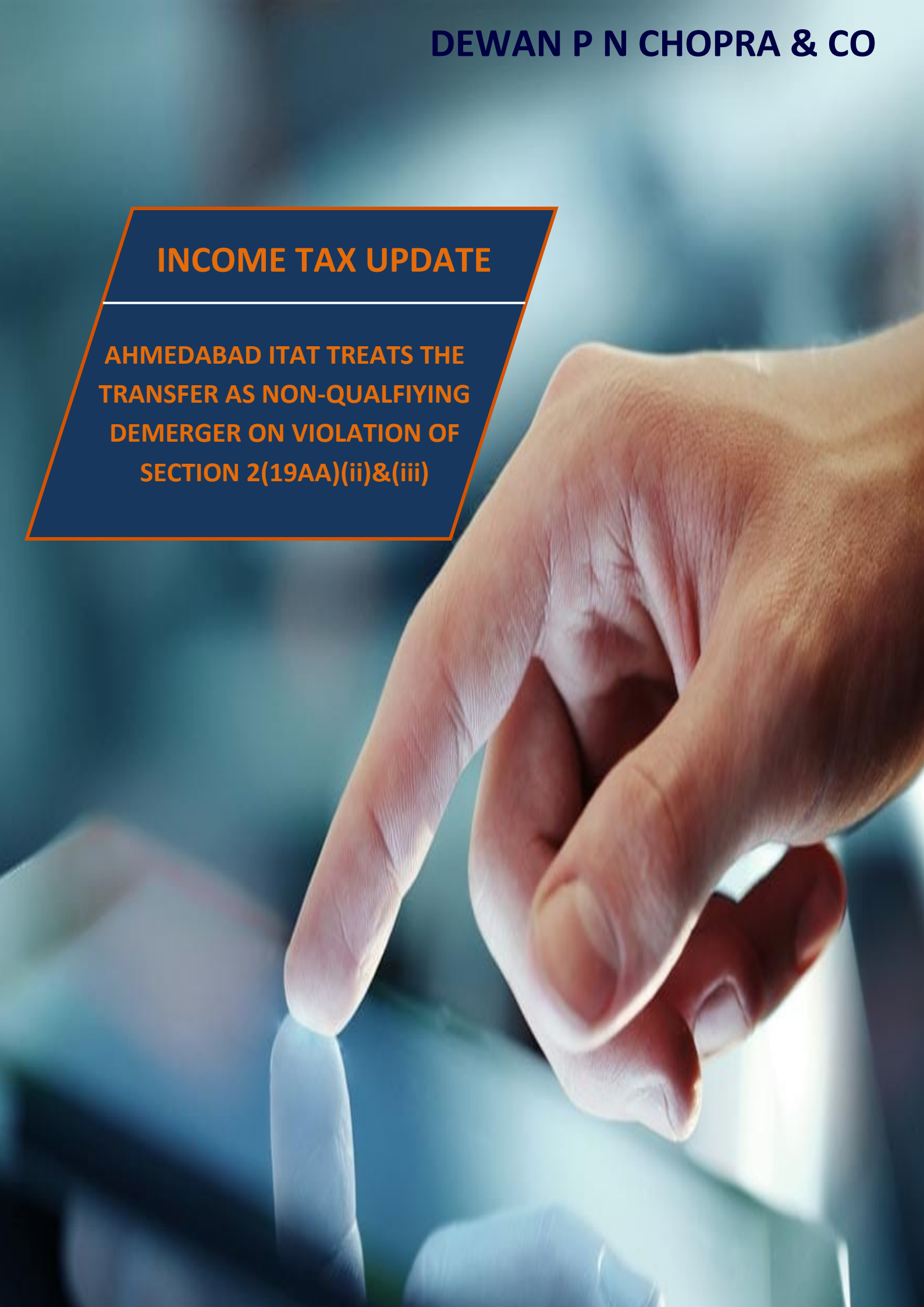


**INCOME TAX UPDATE**

**AHMEDABAD ITAT TREATS THE  
TRANSFER AS NON-QUALIFYING  
DEMERGER ON VIOLATION OF  
SECTION 2(19AA)(ii)&(iii)**



**Ahmedabad ITAT treats the Transfer as Non-  
Qualifying Demerger on Violation of  
Section 2(19AA)(ii)&(iii)**

The assessee co. is engaged in the business of manufacturing and marketing of pharmaceuticals & Cosmetic products.

**Key Issue pertaining to Demerger: -**

- Assessee claimed transfer of its 'treasury unit' undertaking to M/s. Sterling Addlife India Ltd. (SAIL), sanctioned by the order of Hon'ble Gujarat High court, as a qualified Demerger under the provisions of Income-Tax Act.
- However, Assessing Officer determined that the Demerger did not fulfil the conditions under Section 2(19AA) of the Income Tax Act, 1961 (the Act), as:
  - There was no clear demarcation or separation of the assets of the Treasury segment from the assets of the assessee as a whole.
  - The Treasury undertaking did not have any liabilities appearing as on the date of Demerger.

- All the assets and liabilities of the treasury segment have not been transferred to the resulting company pursuant to the scheme of Demerger.
- Treasury segment has not been transferred as a going concern.

Judgement of Hon'ble Ahmedabad ITAT: -

- The Hon'ble Tribunal held that the transfer has not fulfilled the conditions u/s 2(19AA) of the Act, thereby not qualified as a Demerger under the above said section, thereby approving the following observations of CIT and AO:
  - Assessee has never treated the treasury segment as an 'undertaking'. This was evident from the fact that investment of the assessee in its two subsidiary companies (*that represented the core operations of the assessee*) were never a part of treasury undertaking. Although, the treasury undertaking handled investment in SAIL as well as investments in mutual funds which goes on to show that the assessee has attributed only certain activities to its treasury segment as per its own convenience.
  - The intention of the assessee was never to transfer the investment activities undertaken by the treasury segment

but to transfer certain assets only to SAIL without any liabilities.

**Eligibility of a qualifying Demerger is prerogative of Tax Department**

- The legal obligation of the Tax Department to examine the taxability under Section 2(22) and Section 2(19AA) of the Act cannot be treated as pre-empted by the Hon'ble High Court's order.
- The Tribunal emphasized that Income-tax Act operates in its own arena in conjunction with the order of the Hon'ble High Court.
- It is settled position of law that the scheme of Demerger once approved by the Hon'ble Jurisdictional High Court, it cannot be re-visited by any statutory authority. At the same time, the provisions of Income-tax Act had prescribed conditions only under which benefits can be accorded in case of A Demerger.
- In the instant case, since the assessee has failed to comply with the provisions of Section 2(19AA) (ii) & (iii), Demerger of treasury undertaking is a non-qualifying Demerger.

For complete details, please refer to the ITAT Judgement dated 18.02.2025 passed in the case of **Reckitt Benckiser Healthcare India Private Limited vs Dy. Commissioner of Income-tax ITA 1184/Ahd./2018**

<https://itat.gov.in/public/files/upload/1739944513-STyGPj-1-TO.pdf>

*DISCLAIMER: - The summary information herein is based on Hon'ble Ahmedabad ITAT's ruling in the case of Reckitt Benckiser Healthcare India Private Limited vs Dy. Commissioner of Income-tax I.T.A. No. 1184 & 1225/Ahd/2018 dated 18.02.2025. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.*