

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A.T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.645/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2012-13)

ITO, Wd-10(1), Kolkata	Vs.	M/s. Abbey Healthcare (P) Ltd.
P-7, Chowringhee Square, 3 rd Floor, Kolkata- 700069.		4/19A, Vidyasagar (Ganguly Bagan), Kolkata – 700 047.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AAGCA0891C		
(Appellant)	..	(Respondent)

Appellant by :Shri Arindam Bhattacharjee, Addl. CIT(DR)

Respondent by: Shri Mihir Bandyopadhyay, AR

सुनवाईकीतारीख/ **Date of Hearing** : **17/01/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **14/03/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to assessment year 2012-13, is directed against an order passed by the Commissioner of Income Tax(Appeals)-4, Kolkata, in Appeal No.1204/CIT(A)-4/Ward-11(4)/Kol/14-15, dated 03.02.2016, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 27.01.2015.

2. The solitary grievance of the Revenue in this appeal is that the Id. CIT(A) has erred in law as well as on fact in deleting the addition Rs.1,62,67,130/- made by the AO, as during the assessment proceeding as well as in the remand stage the assessee failed to substantiate to the expenses claimed under the head of 'Sales Promotion'.

3. The brief facts apropos this issue are that assessee filed its return of income for A.Y 2012-13 on 27.09.2012 declaring total income of Rs.20.21,350/-. The assessee's case was selected for scrutiny u/s 143(2) of

the Act and the assessing officer completed the assessment u/s 143(3) by making the disallowance on account of doctor investment expenses of Rs.1,62,67,130/-.

4. Aggrieved by the addition made by the assessing officer, the assessee filed an appeal before the Id. CIT(A) who has deleted the addition made by the AO. The Id. CIT(A) observed that expenses of Rs.1,62,67,130/- on account of payment to doctors for rendering operational services including the survey of physical ailment areas in the State of Orissa and distribution of free medical samples and organizing medical camps in remote villages with the help of marketing staffs of the assessee company. Therefore, the said expense was for the purpose of business, this way, the Id. CIT(A) allowed the assessee's claim and deleted the addition made by the AO.

5. Not being satisfied with the order of the Id. CIT(A), the Revenue is in appeal before us. The Id. DR has primarily reiterated the stand taken by the AO which we have already noted in our earlier para and is not being repeated for the sake of brevity. On the other hand, the Id. Counsel for the assessee has primarily reiterated the stand taken by the Id. CIT(A) and defended the order of the Id. CIT(A).

6. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the assessing officer in his impugned order held that though the payment was made by the assessee for the purpose of increasing the sale of the products but the these expenses were not admissible as per instruction No.5/2012 issued by the CBDT. The assessing officer further held that the said circular is explanatory in nature and the effect of the said circular should be given from 10.12.2009, the date of amendment of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation 2002.

We note that the contention of the assessee on this issue was that the CBDT Circular No.05/2012 was applicable only from assessment year 2013-14 onwards and, therefore, not applicable to the assessee under consideration for the A.Y 2012-13. For that we rely on the judgment of the coordinate Bench of ITAT Mumbai in the case of *Syncom Formulations (I) Ltd Vs. DCIT* (ITA No. 6429/M/2012), dated 23.12.2015, wherein it was held that the CBDT Circular No.05/2012, is prospective in nature and therefore applicable only from the assessment year 2013-14 onwards. We note that assessing officer has not disputed the genuineness of the expenditure, his solitary grievance was that the assessee company paid such amount as “Freebies” to the doctors for prescribing pharmaceutical product of the assessee company. We note that assessing officer has not brought any cogent evidence on record to prove that said payment was merely a “Freebies” to the doctors for prescribing pharmaceutical product of the assessee company except a written submission made by Mr.D Chatterjee in the original course of assessment proceedings, who does not have accounting and taxation knowledge, and subsequently he retracted by filing affidavit on dated 04.07.2015. The assessing officer failed to corroborate the statement/submissions of Mr. D Chatterjee with any tangible material/ evidence and therefore we are of the view that addition should not be made solely based of statement/submission. If an earlier statement or submission does not reflect correct fact and circumstances in their true spirit, it is legally permissible to retract the earlier statement, provided the assessee is able to show that his earlier submission was not factually correct. During the remand proceedings the assessee submitted nine photographs of medical camps, five certificates and seven hotel bills in support of medical camp organized by it and we note that assessing officer did not find any mistake or irregularity therein. During the remand proceedings, the assessee also explained to the AO that medical camps organized by the assessee required large expenditure *inter alia* for cost of travelling, reimbursement of cost of conveyance, reimbursement of lodging cost, reimbursement of paramedical persons who attended the camps, cost

of chemicals, hire charges of certain equipments and cost of free samples of medicines etc, and the assessing officer failed to bring any evidence that these expenses were not genuine.

6.1 We note that even otherwise the expenses were not covered by the CBDT Circular No.05/2012, as the expenses were incurred by the assessee for the purpose of business. We note that assessing officer was not justified in applying the guidelines as laid down by CBDT in aforesaid circular in respect of A.Y 2012-13. We note that in subsequent assessment years i.e. in A.Y 2013-14 and in A.Y 2014-15, the assessing officer has allowed the similar claims of the assessee. That being so, we decline to interfere with the order of Id CIT(A) deleting the aforesaid addition. His order on this addition is therefore upheld and the grounds of appeal of the Revenue is dismissed.

6.3. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 14/03/2018.

Sd/-
(A.T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 14/03/2018

[RS SPS]

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant –ITO, Wd-10(1), Kolkata
2. प्रत्यर्थी/ The Respondent-M/s. Abbey Healthcare (P) Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.