



ITA.No.7555/Mum/2012  
India Medtronic Private Limited  
Assessment Year 2008-09

**आयकरअपीलीयअधिकरण “के” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“K” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

**BEFORE SHRI MAHAVIR SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपीलसं./I.T.A. No.7555/Mum/2012  
(निर्धारणवर्ष / Assessment Year: 2008-09)

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| India Medtronic Private Limited<br>1241, Solitaire Corporate Park<br>Building No.12,4 <sup>th</sup> Floor<br>Andheri Ghatkopar Link Road<br>Andheri (East),Mumbai-400 093 | बनाम/<br>Vs. | Deputy Commissioner of<br>Income Tax-8(2)<br>Mumbai |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAACI-4227-Q</b>   |              |   |
| (पीलार्थी/Appellant)  | :            | (प्रत्यर्थी / Respondent)                           |
| Assessee by   | :            | Rajan R Vora & Nikhil Tiwari, Ld. AR's              |
| Revenue by  | :            | v.Jenardhanan, Ld. DR                               |

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| सुनवाईकीतारीख/<br>Date of Hearing       | : | 17/04/2018 |
| घोषणाकीतारीख /<br>Date of Pronouncement | : | 04/05/2018 |

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The captioned appeal by assessee for Assessment Year [AY] 2008-09 contest the *final assessment order* passed u/s 143(3) read with *Section 144C(13)* of the Income Tax Act, 1961 by Ld. Deputy



Commissioner of Income Tax-8(2) pursuant to the directions of *Ld. Dispute Resolution Panel [DRP]*. The assessee has been assessed at Rs.71.21 Crores after certain adjustments / additions / disallowances as against returned income of Rs.56.55 Crores *e-filed* by the assessee on 24/09/2008. Besides original grounds of appeal, the assessee has filed additional grounds of appeal also vide its letters dated 18/05/2015 & 23/06/2017. Since the same do not require appreciation of new facts, the same are taken on record. During impugned AY, the assessee was engaged in the business of *trading of Life Saving Devices*.

2. The *Ld. Authorized Representative [AR]*, at the outset, drew our attention to the fact that most of the issues raised in appeal are covered by the decision of this Tribunal for earlier years in assessee's own case and therefore, the same view may be taken in the impugned AY, there being no change in the facts or circumstances. The *Ld. Departmental Representative [DR]* while fairly conceding the aforesaid fact, placed reliance on the stand of lower authorities. In this backdrop, we proceed to adjudicate the issues raised in the appeal.

3.1 Ground No. 1 is general in nature. Ground numbers 2 to 13 are related with *Transfer Pricing [TP] adjustment* of Rs.13.53 Crores against *Advertising, Marketing & Sales Promotion Expenses [AMP]*. The *Ld TPO*, in his order u/s 92CA(3) dated 28/10/2011, noted that the assessee's *AMP* expenditure amounting to Rs.42.53 Crores constituted approx. 15.49% of the turnover in *distribution segment* as against average of 4.89% reflected by six comparables. Therefore, by applying *Bright Line Test [BLT]*, *Ld. TPO* had suggested *TP adjustment* of Rs.29.10 crores against the same. The *Ld. DRP* provided certain relief to



the assessee on account of exclusion of certain expenses which has reduced the impugned adjustment to Rs.13.53 Crores. Aggrieved, the assessee is in further appeal before us.

3.2 Upon perusal, we find that similar issue of *AMP adjustment* arose in assessee's own case for AY 2010-11 wherein the Tribunal vide *ITA No. 1600/M/2015 dated 17/01/2018* deleted the impugned adjustment, *inter-alia*, on the premise that in the absence of any agreement / arrangement between assessee and its *Associated Enterprises [AE]*, the aforesaid transaction could not be termed as international transaction. The relevant extract from the said order is reproduced here-in-below:-

**3.4.**We have heard the rival submissions. We find that the TPO had held that assessee should have been compensated by its AE for the AMP expenditure incurred by it. We have gone through the agreements entered in to by the AE.s with the assessee, that in the agreements there is no condition about sharing of AMP, that the agreements talks of using best efforts to market and distribute the product or promote the products in a commercially reasonable manner. In our opinion, these terms do not give any indication that the AE and the assessee had to share AMP expenses. Secondly, if the AE was benefitted indirectly by the AMP expenditure incurred by the assessee, it cannot be held that it had entered into agreement for sharing AMP expenses. We are also of the opinion that Bright Line Method should not have been applied by the TPO. We would like to reproduce the relevant portion of the order of the Thomas Cook(supra),wherein the identical issue has been dealt in length, and it reads as under:

.....

Considering the above, we decide the first effective ground of appeal (GOA-1-16) in favour OF the assessee.

Since a view has already been taken by the Tribunal on the issue, respectfully following the judicial discipline, we delete the impugned adjustment. Resultantly, Ground No. 2 stands allowed whereas ground numbers 3 to 13 become *infructuous*.

4. Ground Numbers 14 & 5 are not being pressed by Ld. AR and therefore, the same stands dismissed in *limine*.



5. Ground Numbers 16 & 17 are related with expenditure of Rs.49,15,181/- incurred by assessee in respect of *foreign trips* of doctors. The same has been disallowed primarily on the ground that the same was against the code of conduct of the medical professionals and the medical fraternity. The disallowance has been confirmed by relying upon the order of DRP for AY 2006-07. The arguments of the Ld. AR are that the assessee was engaged in the trading of high precision medical devices which requires the doctors prescribing / using it to understand the technicalities of the product and the doctors are trained through live surgeries, medical conferences etc. The aforesaid expenditure represent sponsoring the trip for doctors for going abroad to attend seminars and conferences for creating awareness about the company's products and update / educate them about the company's products and therefore, the expenditure is in the ordinary course of business and allowable u/s 37(1). Such sponsoring of foreign trips is necessitated by rapid development in the field of medical science both in terms of new products as well as diseases. The Ld. AR has also relied on various judicial pronouncements for the contentions that *Medical Council of India [MCI] guidelines* were applicable to professionals only and do not apply to other tax entities. It is further contended that *CBDT Circular No. 05/2012 dated 01/08/2012* providing for disallowance of expenditure u/s 37(1) do not apply to impugned AY. Reliance has been placed on the order of Tribunal in assessee's own case for AY 2004-05 & 2010-11. Upon perusal, we find that the nature of expenses incurred by the assessee is not clear i.e. whether the same has been incurred to sponsor foreign visits of doctors to attend seminars or conferences



relating to assessee's products or whether the same are in the nature of freebies to the doctors. In our opinion, the expenditure incurred by the assessee to sponsor foreign visit to generate knowledge about the company's products was clearly allowable u/s 37(1) and there was no restriction *per-se* regarding allowability of the same. Therefore, the matter stands remitted back to the file of Ld. AO for appreciation of the factual matrix and to be decided as per law after providing opportunity to the assessee to demonstrate the nature of these expenses. Ground No. 16 stand allowed for statistical purposes whereas Ground No. 17 becomes *infructuous*.

6. Ground No. 18 is related with disallowance of depreciation on Goodwill for Rs.1,29,776/-. The same has been disallowed on the premise that the goodwill did not fall under specific *intangible assets* as mentioned in Section 32. However, we find that the issue stood squarely covered in assessee's favor by the decision of Hon'ble Apex Court rendered in *CIT Vs. Smifs Securities Limited [CA 5961 of 2012 22/08/2012]* wherein it was held that Goodwill was an intangible asset eligible for depreciation u/s 32. Accordingly, by deleting this addition, we allow this ground of appeal.

7. Ground No. 19 is related with depreciation on Plant & Machinery & Building for Rs.4,55,605/-.The same has been disallowed since these assets remained idle since manufacturing process stood discontinued. We are of the opinion that once an asset forms part of block of asset, it loses its individual identity and further, there is no requirement that each and every item in the said block should actually be used in the impugned AY so as to entitle the assessee to claim depreciation thereupon.



Otherwise also, this issue stood covered in assessee's favor by the cited order of the Tribunal in assessee's own case for AY 2010-11. Therefore, this addition stand deleted.

8. Ground No. 20 is related with certain *advances written-off* by the assessee aggregating to Rs.14,29,718/-. Upon perusal of the nature of these expenses as filed before us, we find that advances are primarily in the nature of *advance for shipping & handling charges, advertising material, freight, packing, hotel booking, project hiring, consultancy charges, booking charges etc.* which are primarily in relation to business activities carried out by the assessee in normal course of business and hence, allowable as *Business Loss* u/s 28 as per the decision of Hon'ble Bombay High Court rendered in *Harshad J Choksi Vs CIT [254 ITR 499]*. Respectfully following the same, the impugned addition is deleted.

9. Ground No. 21 is related with *trading advances (bad debts)* written off for Rs.67,05,411/-. The Ld. AR drew our attention to the additional evidences to submit that the impugned expenditure was nothing but *bad debts written-off* and hence allowable in terms of decision of Hon'ble Apex Court rendered in *TRF Ltd. Vs. CIT [323 ITR 397]*. We find that since the said disallowance has been made by lower authorities for want of adequate information / details, the issue needs to be remitted back to the file of Ld. AO in the light of additional evidences submitted by the assessee. We order so. The assessee is directed to substantiate his claim in this regard. This ground stand allowed for statistical purposes.

10. Ground No. 22 to 24 are consequential in nature and hence, do not require any interference on our part.



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11. Ground No. 25 & 26 is related with disallowance of expenditure on *gift articles* for Rs.7,48,795/-. Upon perusal of *para 8.3* of the quantum assessment order, we find that this addition has been deleted by Ld. AO himself and no such addition has been made in final computations and therefore, these grounds stands dismissed as *infructuous*.

12. Ground No. 27 is related with depreciation of on *non-compete fees* of Rs.4.73 crores paid by the assessee in AY 2002-03 to an entity namely *Medtronic Device Limited*. The same was claimed u/s 37(1) in AY 2002-03 but the Tribunal vide its order *ITA No. 811/Ahd/2008 dated 25/10/2016* held that the said expenditure was capital expenditure and in the nature of *any other business or commercial rights* and hence eligible for depreciation under the provisions of the act. The Ld. AR, vide this ground, has pleaded that consequential relief should be provided to the assessee in the impugned AY as provided by Tribunal in assessee's own case for AY 2003-04 & 2004-05. Therefore, on factual matrix, this issue stands remitted back to the file of Ld. AO for verification of the facts and consider the claim of the assessee in terms of cited orders of the Tribunal. This ground stands allowed for statistical purposes.

13. All the grounds stand disposed-off in terms of our above order. The assessee's appeal stands partly allowed.

*Order pronounced in the open court on 04<sup>th</sup> May, 2018*

Sd/-

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



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**आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**