

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “A” BENCH

**(BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2194/AHD/2015 & C.O. No. 172/AHD/15
(Assessment Year: 2011-12)**

Dy. Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad	V/S	Sundyota Numandis Pharmaceuticals Pvt. Ltd. Dyota Numandis House, 705-708, Safal Profitair, Tower-A, 100Ft. Ring Road, Prahladnagar, Ahmedabad-380015
Sundyota Numandis Pharmaceuticals Pvt. Ltd. Dyota Numandis House, 705-708, Safal Profitair, Tower-A, 100Ft. Ring Road, Prahladnagar, Ahmedabad-380015	V/S	Dy. Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad
(Appellant)		(Respondent)

PAN: AABCD 8132C

**Appellant by : Shri S. K. Dev, Sr. D.R.
Respondent by : Shri T.P. Hemani & P.B. Parmar,AR**

(आदेश)/ORDER

Date of hearing : 19 -09-2018

Date of Pronouncement : 30 -11-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal has been preferred by the Revenue against the deletion of addition of Rs. 70,71,329/- made on account of sales promotion and C.O. has been preferred by the assessee and has taken following grounds:
 1. *The learned CIT(A) has erred in law and on facts of the case in confirming disallowance of interest expenses of Rs.3,75,6007- u/s 36(I)(iii) of the Act.*
 2. *The learned CIT(A) has erred in law and on facts of the case in confirming disallowance in respect of sales promotion expenses to the extent of Rs. 16,60,451/- out of total disallowance of Rs.87,31,780/-.*
2. The facts of the case are that the assessee company is engaged in the business of Trading in Medicines. And in scrutiny assessment, disallowance u/s. 36(1)(iii) to the tune of Rs. 3,75,600/- was made and disallowance of Sales Promotion Expenses of Rs. 87,31,780/- was made.
3. So far disallowance u/s 36(1)(iii) is concerned, assessee company had advanced a sum of Rs. 93,88,125/- for factory land and guest house. No specific borrowings were made for making such advances. And assessee company had capital and reserve in excess of amount advanced and assessee relied the decision of Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. 178 taxmann.com 135 wherein it is held in such circumstances, no disallowance can be made. We are in agreement with the assessee that assessee has made advance for the business purpose and such in circumstances interest was paid for purpose of business is allowable expenses. Therefore, we allow the objections of the assessee.

4. Now we come to the issue of objection filed by the assessee that an amount of Rs. 16,60,451/- should not have been disallowed by the ld. CIT(A).
5. As we can see, these disallowances were made on account of CBDT Circular No. 5/2012 has been issued on 01.08.2012 whereas the year under consideration is assessment year 2011-12 and Financial Year 2010-11 that is period prior to the issuance of concerned circular. The said circular is not retrospective in the nature. Therefore, in our considered opinion, in such circumstances, no disallowance can be made on the basis of above said circular. Therefore, we allow objection of the assessee.
6. So far deleting the addition of Rs. 70,71,329/- is concerned, same has also been made on the basis of above said circular. Since, the said circular is not applicable in the case of assessee. Thus, we dismiss this ground of appeal of revenue.
7. In the result, appeal filed by the Revenue is dismissed and Cross Objection filed by the Assessee are allowed.

Order pronounced in Open Court on	30- 11- 2018
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Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Ahmedabad: Dated 30/11/2018

True Copy

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.

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C.O. No. 172/Ahd/2015
A.Y. 2011-12

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3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad