

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.522/NAG/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Goldline Pharmaceuticals Pvt. Ltd.,
R/2, Jain Mandir Road, Atha Rastha Chowk,
Laxminagar, Nagpur – 440022

PAN : AACCG2989F

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 6, Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.C. Thakar
Revenue by : Shri U.U. Kasar

सुनवाई की तारीख / Date of Hearing : 28-03-2019

घोषणा की तारीख / Date of Pronouncement : 29-03-2019

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-II, Nagpur dated 30-09-2014 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are : The assessee is engaged in manufacturing of pharmaceuticals. In scrutiny assessment proceedings the Assessing Officer observed that the assessee has incurred expenditure on travel, sightseeing, lodging, etc. amounting to Rs.3,11,52,609/- on the foreign visit of the Doctors. The Assessing Officer after analyzing the facts and details of expenditure disallowed Rs.41,06,850/-.

Aggrieved against the assessment order dated 28-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) enhanced the assessment and made addition of entire expenditure claimed by the assessee in respect of foreign tour of the Doctors. The Commissioner of Income Tax (Appeals) also placed reliance on the CBDT Circle No. 5/12 dated 01-08-2012 for disallowing entire expenditure.

3. Shri S.C. Thakar appearing on behalf of the assessee submitted that in impugned order disallowance has been made by the Commissioner of Income Tax (Appeals) by placing reliance on CBDT Circular No. 5/12 (supra) which prohibits allowing of expenditure in the hands of Doctors in line with Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The ld. AR submitted that the Tribunal in various decisions has held that no disallowance of expenditure is to be made in the hands of pharmaceuticals company on the basis of aforesaid CBDT Circular as it does not apply to the pharmaceuticals company. In support of his submissions the ld. AR placed reliance on the following decisions :

- i. Syncom Formulation (I) Ltd. VS. DCIT in ITA Nos. 6429 & 6428/Mum/2012 for assessment years 2010-11 & 2011-12 decided on 23-12-2015 (Mumbai-Trib.);
- ii. Emcure Pharmaceuticals Ltd. Vs. DCIT in ITA No. 1532/PUN/2015 for assessment year 2010-11 decided on 29-01-2018 (Pune-Trib.);
- iii. Life Sight Surgicals Pvt. Ltd. Vs. DCIT in ITA No. 1427/AHD/2007 for assessment year 2004-05 decided on 16-07-2010.

4. On the other hand Shri U.U. Kasar representing the Department vehemently defended the action of Commissioner of Income Tax (Appeals) in disallowing the entire amount claimed by the assessee in respect of foreign tour expenditure of the Doctors. The ld. DR submitted that the expenditure was not in connection with the business of the assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the order of Commissioner of Income Tax (Appeals) in disallowing entire expenditure in respect of foreign tour of the medical practitioners sponsored by the assessee. While disallowing aforesaid expenditure reliance has been placed by the Commissioner of Income Tax (Appeals) on CBDT Circular No. 5/12 (supra). The Pune Bench of Tribunal in the case of Emcure Pharmaceuticals Ltd. Vs. DCIT (supra) has held that the circular issued by the CBDT enlarging the scope of disallowance to the pharmaceuticals companies is without any enabling notification or circular of the Medical Council of India. The pharmaceutical companies are outside the scope of regulations framed by the Medical Council of India or the CBDT Circular so far. Thus, in the light of aforesaid decision the disallowance of entire expenditure made by the Commissioner of Income Tax (Appeals) is without any merit.

6. However, we observe that the Assessing Officer has made part disallowance of expenditure after analyzing each and every aspect of expenditure on the touchstones of allowability of expenditure u/s. 37(1) of the Act. The expenditure disallowed by the Assessing Officer are such which are not connected with the business of assessee. We find merit in the findings of Assessing Officer. Consequently, the impugned order is modified and disallowance is restricted to the addition made in the assessment order.

7. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Friday, the 29th day of March, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

नागपुर / Nagpur; दिनांक / Dated : 29th March, 2019.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-II, Nagpur
4. आयकर आयुक्त / The CIT-III, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur