

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2790/Ahd/2017

(निर्धारण वर्ष/Assessment Year : 2010-11)

M/s. K. R. Medical Clinic Pharmacy Vedant hospital Nr. Samved hospital Navrangpura Ahmedabad-380 009	बनाम/ Vs.	The ACIT Circled-5(2) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFK 9190 J		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri S.N. Soparkar, Sr.Advocate with Ms.Urvashi Shodhan
प्रत्यर्थी की ओर से/Respondent by:	Shri L.P. Jain, Sr.DR

सुनवाई की तारीख/ Date of Hearing	25/10/2019
घोषणा की तारीख/Date of Pronouncement	20/11/2019

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals), Ahmedabad-5 [CIT(A) in short] vide appeal no.CIT(A)-5/ITO, Wd.5(2)(1)/387/2016-17 dated 20/10/2017 arising in the assessment order passed under s.143(3) r.w.s.147 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 02/11/2016 relevant to Assessment Year (AY) 2010-11.



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2. The assessee has raised the following grounds of appeal:-

1. *Ld. CIT(A) erred in law and on facts confirming re-opening of the scrutiny assessment by AO in absence of escapement of income chargeable to tax. Ld. CIT(A) ought to have quashed order passed by AO holding it as illegal, unlawful & void ab initio.*
2. *Ld. CIT(A) erred in law and on facts in confirming assessment framed by AO u/s.143(3) r w s 147 on account of change of opinion. Ld. CIT(A) ought to have quashed reassessment proceedings impermissible under law.*
3. *Ld. CIT erred in law and on facts confirming addition made by AO of Rs.35,78,328/- commission paid to hospitals vis-à-vis provisions of Medical Council (Professional Conduct, Etiquette and Ethics) Regulation 2002.*
4. *Ld. CIT erred in law and on facts confirming action of AO for commission paid to be in the nature of monetary benefits as per provisions of Medical Council Regulation ignoring commercial nature of the payment under the terms of agreement with the hospitals.*
5. *Ld.CIT(A) erred in law and on facts not considering the submissions that the appellant (prayer) as well the hospitals (recipient) both were paying taxes at maximum chargeable rate.*
6. *Ld. CIT erred in law and on facts in brushing aside decision of Mumbai ITAT holding CBDT circular applicable from AY 2013/14 not to the year under consideration without any cogent reasoning. Judicial propriety requires ld.CIT to follow decisions of higher authorities.*
7. *Interest levied u/s.234B & 234C of the Act is not justified.*
8. *Initiation of penalty u/s.271(1)(c) of the Act is not justified.*



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2. Ground Nos.1 to 6 are inter-connected. Briefly stated, facts are that the assessee is engaged in the business of medicines. The case had been reopened because assessee had debited commission expenses of Rs.36,67,506/- out of which an amount of Rs.9,08,150/- was paid/credited to M/s.Infectious Disease Clinic and Rs.26,70,178/- was paid/credited to M/s.Hemanto Oncology Clinic Pvt.Ltd. which is run by unit of doctors. As per Ld.Assessing Officer, this was in violation of the prohibition imposed by Indian Medical Council on medical practitioner and their association from taking any gift, travel facility, hospitality, cash or monetary grant etc. And as per Ld.AO, assessee-firm had violated provisions of IMC Regulation 2002 and CBDT Circular No.5/2012 dated 01/08/2012 applicable in the case of assessee. Hence, Ld. AO disallowed the expenses of Rs.35,78,328/-.

3. Thereafter, assessee preferred first statutory appeal before the Ld.CIT(A) who revisited the issue but confirmed the action of the Ld.AO by holding that provision of section 37 of the Act are also not applicable in this case, as these expenses are incurred in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations-2002.

4. Now the assessee has come in appeal before us.

5. We have gone through the relevant record and orders of the authorities below. Now question before us is whether any gift bearing



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company logo given to Doctor for advertising is eligible u/s.37(1) of the Act or not.

6. Ld.AR relied upon an order of Co-ordinate Bench passed in ITA No.25495/Ahd/2016 wherein similar facts and circumstances, the matter was decided in favour of assessee with the following observation:

“2.13 We have gone through the relevant record and impugned order. Ld. AR submitted an order of co-ordinate bench in ITA N.2546/Ahd/2015 for A.Y.2011-12 in quantum proceeding, wherein Hon'ble Bench held as follows:

'5. We shall now turn to the substantive appeal of the assessee. From the perusal of the record, we find that the AO has disallowed commission paid aggregating to Rs.41,39,131/- to doctors. For this purpose, the Assessing Officer (AO) has relied upon the CBDT Circular No.5/2012 dated 01/08/2012 issued by BDT and observed that the payment made to the doctors contravenes section 37(1) of the Act in view of the Explanation appended to this subsection. We find that the issue is no longer res Integra and has been examined by the Coordinate Bench of Tribunal in Syncom Formulations (I) Ltd. vs. DCIT in ITAfNos.6429 & 6428/Mum/2012 order dated 23/12/2015. The relevant operative para of the order of the Coordinate Bench is reproduced hereunder:-

"5. We have considered rival contentions and found that receiving of gifts by doctors was prohibited by MCI guidelines, giving of the same by manufacturer is not prohibited under any law for the time being in force. Giving small gifts bearing company logo to doctors does not tantamount to giving gifts to doctors but it is regarded as advertising expenses. As regards sponsoring doctors for conferences and extending hospitality, pharmaceuticals companies have been sponsoring practicing doctors to attend prestigious conferences so that they gather contemporary knowledge about management of certain illness/disease and learn about newer therapies. We found that the disallowance was made by the AO by relying on the CBDT Circular dated 01.08.2012 onwards. However, the Circular was not applicable because it was introduced w.e.f. 01.08.2012. i.e. assessment year 2013-2014.



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Whereas, the relevant assessment year under consideration is 2010-2011 and 2011-2012. Accordingly, we do not find any merit in the disallowance so made by the AO in both the assessment years under consideration. "

6. In parity with the reasoning given by the Coordinate Bench, we find that the disallowances made by the AO are not justified. Accordingly, the substantive claim of the assessee is allowed.

7. In the result, appeal of the assessee is partly allowed.'

2.14 Since ITAT Ahmedabad, 'SMC' Bench has deleted the disallowance of Rs.41,39,131/- against which the penalty of te.12,78,996/- was levied. Now there is no basis for levying the penalty is remained therefore we direct Ld.AO to delete the penalty.

2.15 In the result, appeal filed by the department is dismissed."

7. The Ld.AR also relied upon an order of Co-ordinate Bench, when Hon'ble Accountant Member wrote that order and in similar facts and circumstances appeal of the Revenue was dismissed with following observation:-

"6.2 I have considered the assessment order and the submissions made by the appellant. A perusal of the assessment order shows that the AO had disallowed the amount of Rs.47,20,260/- debited as sales promotion expenses in view of CBDT Circular No. 5 of 2012. This Circular was issued by the CBDT to curb the practice of pharma companies offering gifts for promotion of their products. The appellant has submitted during appellate proceedings that it was not a pharmaceutical company but was engaged in the business of supplying medical equipments imported from other countries. Hence, the said Circular was not applicable to it. After a perusal of the submissions made by the appellant, I am of the opinion that disallowance of sales promotion expenses by applying provisions of Circular No.5/2012 cannot be made since



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the appellant is. not a pharmaceutical company. The items which were given by the appellant company were not free items but were part and parcel of the machineries and equipments that were supplied by it to various customers. Further, it is also seen that most of the expenses incurred is on account of sales made to Government hospitals. Most of these expenses pertain to the cost of accessories and peripherals supplied to customers and needed for the operation of the machines. Moreover, an similar addition on identical facts in the appellant's own case for Asst. Year 2010-11 was decided in favour of the appellant by the learned CIT (A)-VIII, Ahmedabad vide his order No. CIT (A)-VIII/DCIT/Cir-4/131/12-13 dated 11.01.2013. Respectfully following the decision of my predecessor and in view of the facts of the case, the addition of Rs.47,20,260/- is deleted. Ground of appeal No.3 is accordingly allowed.”

8. Since in similar facts and circumstances of the case ITAT has granted relief thus, in parity with the above said order, we allow this ground of appeal of assessee and direct Assessing Officer to allow the claim of expenses to the tune of Rs.35,78,328/-.

9. So far as ground No.7 with regard to levy of interest u/s.234B & 234C of the Act is concerned, same are consequential in nature and so we need not to decide the same at this stage.

10. So far as Ground No.8 with regard to initiation of penalty u/s.271(1)(c) of the Act is concerned, same is also consequential in nature and we need not to decide the same at this stage.



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11. In the result, the appeal of the Assessee is allowed.

This Order pronounced in Open Court on	20/11/2019
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 20/11/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A), Ahmedabad-5
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad