आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आ.करअपील सं./ I.T.A. No.1104/Mum/2018
(**निर्धारण वर्ष /** Assessment Year:2014-15)

M/s. Aristo Pharmaceuticals Pvt. Ltd. Mercantile Chambers, 3rd Floor 12, N.J. Heredia Marg Ballard Estate, Mumbai-400 001.	**बनाम**/ Vs.	**DCIT-2(1)(1)** 5th Floor Aaykar Bhavan Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACA-4495-N		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

आयकरअपील सं./ I.T.A. No.1972/Mum/2018
(**निर्धारण वर्ष /** Assessment Year:2014-15)

DCIT-2(1)(1) 5th Floor Aaykar Bhavan Mumbai-400 020.	**बनाम**/ Vs.	**M/s. Aristo Pharmaceuticals Pvt. Ltd.** Mercantile Chambers, 3rd Floor 12, N.J. Heredia Marg Ballard Estate, Mumbai-400 001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACA-4495-N		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Shri Ajay Kumar Rastogi- Ld. AR
Revenue by	:	Shri Anadi Varma - Ld.CIT-DR & Shri V.Vinod Kumar-Ld.DR

सुनवाई की तारीख/ **Date of Hearing**	:	06/12/2019
घोषणा की तारीख / **Date of Pronouncement**	:	15/01/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member) :-

1. Aforesaid cross-appeals for Assessment Year [in short referred to as 'AY'] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-4/IT-268/DCIT-2(1)(1)* dated 15/01/2018. The grounds raised by the assessee read as under: -

1. For that the Ld. CIT(A) has erred in sustaining disallowance of Rs.1,04,96,044/- being expenditure incurred on 'Sales Promotion Articles'.
2. For that the Ld. CIT(A) has erred in fixing the limit of Gift Articles exceeding the cost of Rs.750/- each while sustaining disallowance of Rs.1,04,96,044/-.
3. For that the Ld. CIT(A) has erred in sustaining disallowance of Rs.23,63,65,631/- being expenditure incurred and debited under the head 'Medical Conference Expense.
4. For that the Ld. CIT(A) has erred in holding that the regulations dated 11/03/2002 and 10/12/2009 issued by MCI would fall within the meaning of 'Delegated Legislation' and hence the same is 'law' and does not require specific legislation by the legislature and its accent by the Hon'ble President of India.
5. For that the Ld. CIT(A) has erred in holding that the regulations issued by MCI have all the tenets of a valid law being a 'delegated legislation' and is required to be implemented as such.
6. For that the Ld. CIT(A) has erred in holding that expenditure incurred in violation of such regulation by anyone would constitute an offence and is prohibited by law and as such the expenditure would be hit by Explanation to Section 37(1).
7. For that the Ld. CIT(A) has erred in holding that the absence of punishment to entities other than medical practitioner cannot be a ground for not holding such expenditure as offence and/or prohibited by law in the hands of entity incurring the expense.
8. For that the Ld. CIT(A) has erred in holding that when the receipt of freebies is an offence and/or prohibited by law in the hands of doctors, the payment thereof by the payer as a necessary corollary will be an offence which is prohibited by law.
9. For that the Ld. CIT(A) has erred in holding that the contention of the appellant that MCI is not the Regulatory Authority cannot be accepted in view of judgment of the Hon'ble Himachal Pradesh High Court wherein the validity of Circular No.5/2012 has been upheld.
10. For that the Ld. CIT (A) has failed to appreciate that the regulations issued by MCI are not 'law' and that MCI is not a regulatory authority for the appellant.
11. For that the Ld. CIT(A) has erred in not following the orders of ITAT, Mumbai Bench in the case of PHL Pharma Ltd. in ITA No.4605/ Mumbai/2014.

12. For that the Ld. CIT(A) has erred has erred in holding that the order of Hon'ble Tribunal cannot be blindly applied in view of decision of the Hon'ble Himachal Pradesh High Court.
13. For that the Ld. CIT(A) has erred has erred in holding that since the expenditure incurred is in violation of Regulations framed by MCI and, therefore, the same is not an allowable deduction.
14. For that the Ld. CIT(A) has erred in holding that the ITAT, Mumbai Bench had no occasion to consider that the Regulations have been issued by MCI in exercise of power u/s 33 of the MCI Act, 1956 by following proper procedure and mandate of law and accordingly would come within the ambit of 'delegated legislation' and violation thereof would be hit by Explanation to Section 37.
15. For that the Ld. CIT(A) has erred in holding that the decision of the ITAT in its entirety is not applicable to the appellant's case.
16. For that the Ld. CIT(A) has erred in ignoring the judgment of Hon'ble Delhi High Court in the case of Max Hospital.
17. For that the sustenance of disallowance of Rs. 1,04,96,044/- and Rs.23,63,65,631/- are wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.
18. For that the whole order is bad in facts and law of the case and is fit to be modified.

The grounds raised by the revenue read as under: -

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of sales promotion expenses of Rs.13,93,11,578/- without considering Circular No. 5/2012 (F.No. 225/142/2012-ITA.II) dated 01.08.2012.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of sales promotion expenses of Rs.13,93,11,578/- without appreciating the fact that the expenditure was incurred for providing freebies to medical practitioners and their professional associates in violation of regulation issued by Medical Council of India."
3. For these and other grounds that may be urged at the time of hearing, the decision of the CIT(A) may be set aside and that of the AO be restored.

2.1 Facts on record would reveal that the assessee being resident corporate assessee is stated to be engaged in manufacturing and sale of pharmaceuticals and allied products. The assessment for year under consideration was framed u/s 143(3) on 28/12/2016 wherein the assessee was saddled with disallowance of expenditure on sales promotional articles for Rs.1498.07 Lacs and disallowance of medial

conference expenditure for Rs.2363.65 Lacs, while computing its income.

2.2 The perusal of para 5.1 of the quantum assessment order would reveal that expenditure on sales promotional articles represent cost of gift articles which are stated to be distributed amongst doctors, stockiest, and chemists through assessee's Medical Representative and also by way of distribution during medical camps conducted by the assessee from time to time. The expenditure on gift articles having a value of more than Rs.750/- per article aggregated to Rs.104.96 Lacs out of total expenditure of Rs.1498.07 Lacs. During assessment proceedings, it was pointed out by the assessee that substantial relief was granted, on this account, by first appellate authority for AYs 2011-12 & 2012-13 and the cross-appeals were pending before the Tribunal.

However, following consistent stand taken by department in AYs 2011-12 to 2013-14, the entire expenditure of Rs.1498.07 Lacs was disallowed by Ld. AO and added back to the income of the assessee.

2.3 The Medical Conference Expenditure of Rs.2363.65 Lacs, as per assessee's submissions dated 20/12/2016, represented Registration fees directly paid to organizers for doctors attending the conferences, travelling expenses of doctors for attending conferences, stay charges for attending conferences, food expenditure during conferences, expenditure on stall and other activity, expenditure on holding medical camps for detection and awareness of diseases and expenditure on distribution of gift articles etc. The head-wise break-up of the expenditure has already been tabulated in para 6.2 of the quantum assessment order.

2.4 In defense of allowability of medical conference expenditure, the assessee submitted that the stated expenditure under various heads was incurred wholly and exclusively for the purpose of assessee's business and therefore, the same was an allowable deduction. However, keeping in view of the nature of expenditure, Ld. AO formed an opinion that the expenditure was incurred in violation of Medical Council of India notification dated 10/12/2009 amending the Indian Medical Council (Professional conduct, etiquette and ethics) Regulations, 2002 and therefore, invoking explanation to Section 37(1) and applying the same reasoning as applied while disallowing the expenditure on sales promotional articles, the said expenditure of Rs.2363.65 Lacs was also disallowed and added back to the income of the assessee.

3.1 Aggrieved, the assessee contested both the disallowances before learned first appellate authority. With respect to disallowance of Sales promotion expenditure, the attention was drawn to appellate orders for AYs 2011-12 & 2012-13 wherein the assessee was saddled with similar disallowances by Ld. AO. However, upon further appeal, Ld. CIT(A) allowed expenditure on gift articles costing less than Rs.750/- per article but confirmed disallowance on gift articles costing more than Rs.750/- per article. At the same time, reliance was placed on various judicial pronouncements to support the argument that the MCI guidelines / notifications / Regulations were not applicable to pharma companies and the expenditure was an allowable deduction. Assailing CBDT Circular No.05/2012 dated 01/08/2012, it was submitted that CBDT had no power to levy tax through circular / notification and could not term particular

expenditure to be prohibited by law or to be an offence. It was pleaded that the circular could not override the substantive provision of the act.

3.2 The Ld. CIT(A), relying upon the appellate order for AY 2011-12, directed Ld.AO to restrict the disallowance on account of sale promotion expenditure to Rs.104.96 Lacs, being expenditure on gift article each costing more than Rs.750/- per article and granted relief of Rs.1393.11 Lacs, being expenditure on gift articles where cost of each articles did not exceed Rs.750/- per article. Aggrieved, the assessee as well as revenue is under appeal before us, on this issue.

3.3 Regarding medical conference expenditure, the attention was drawn to the fact that since both the disallowances were made on similar reasoning, the assessee's defense as made for disallowance of sale promotion expenditure would equally apply to this disallowance also. Reliance was also placed on the favorable decision of Mumbai Tribunal rendered in **DCIT V/s PHL Pharma Limited (ITA No. 4605/Mum/2014 order dated 12/01/2017)** stated to be rendered under similar factual matrix.

3.4 However, not convinced, Ld. CIT(A) rejected various pleas raised by the assessee, *inter-alia,* by observing that the assessee was not able to satisfy Assessing Officer that the expenditure was not in violation of regulations framed by MCI. It was also observed that the cited decision of Mumbai Tribunal did not consider the aspect that when the regulations were issued u/s 33 of Indian Medical Council Act, 1956 by competent authority as per proper procedure and mandate of law, the same would constitute delegated legislation and therefore, the violation of the same would be hit by explanation to Section 37(1). Finally, the said

disallowance was confirmed. Aggrieved, the assessee is under further appeal before us.

4.1 We have carefully heard rival submissions and perused relevant material on record including documents placed in the paper-book and deliberated on various judicial pronouncements as cited by both the representatives including decisions rendered by Tribunal in assessee's own case for earlier years. The learned Sr. Counsel, representing assessee, submitted that the issue of disallowance of sales promotion expenditure stood squarely covered in assessee's favor by the earlier orders of Tribunal ITA Nos. 6680/Mum/2012 & others for AYs 2009-10, 2011-12 & 2012-13 common order dated 26/07/2018 which has subsequently been followed by Tribunal in AY 2013-14, ITA No.5807/Mum/2017 order dated 28/06/2019. The copies of orders have already been placed on record, which we have considered.

4.2 It is evident from the quantum assessment order that Ld.AO has primarily gone by the stand taken by revenue in earlier AYs 2011-12 to 2013-14 while making the impugned disallowance. The learned first authority also granted partial relief to the assessee by following appellate orders of earlier years, which formed subject matter of cross-appeals before this Tribunal in AYs 2011-12 & 2012-13. The issue of allowability of expenditure on sales promotion articles u/s 37(1) as well as in the light of circular issued by CBDT / MCI was subject matter of elaborate deliberations by the co-ordinate bench in assessee's own case for AYs 2011-12 & 2012-13, wherein the issue was concluded in assessee's favor. The operative portion of the decision, for ease of reference, could be extracted in the following manner: -

'21. We have deliberated at length on the issue under consideration and after perusing the regulations issued by the Medical Council of India, find that the same lays down the code of conduct in respect of the doctors and other medical professionals registered with it, and are not applicable to the pharmaceuticals or allied health sector industries. Rather, a perusal of the provisions of the Indian Medical Council Act, 1956, reveals that the scope and ambit of statutory provisions relating to professional conduct of registered medical practitioners under the Indian Medical Council Act, 1956 is restricted only to the persons registered as medical practitioners with the State Medical Council and whose name are entered in the Indian Medical Register maintained under Sec. 21 of the said Act. We are of the considered view that the scheme of the Indian Medical Council Act, 1956 neither deals with nor provides for any conduct of any association/society and deals only with the conduct of individual registered medical practitioners. In the backdrop of the aforesaid facts, it emerges that the applicability of the MCI regulations would only cover individual medical practitioners and not the pharmaceutical companies or allied health sector industries. Interestingly, the scope of the applicability of the MCI regulations was looked into by the Hon'ble High Court of Delhi in the case of *Max Hospital, Pitampura* v. *Medical Council of India* (CWP No. 1334/2013, dated 10.01.2014). In the aforementioned case the MCI had filed an 'Affidavit' before the High Court, wherein it was deposed by the council that its jurisdiction is limited only to take action against the registered medical professionals under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, and it has no jurisdiction to pass any order affecting the rights/interest of the petitioner hospital. We are of the considered view that on the basis of the aforesaid deposition of MCI that its jurisdiction stands restricted to the registered medical professionals, it can safely be concluded that the MCI regulations would in no way impinge on the functioning of the assessee-company which is engaged in the business of manufacturing and sale of pharmaceutical and allied products. We thus, in the backdrop of our aforesaid deliberations are of the considered view that the code of conduct enshrined in the MCI regulations are solely meant to be followed and adhered by medical practitioners/doctors, and such a regulation or code of conduct would not cover the pharmaceutical company or healthcare sector in any manner. We are further of the view that in the backdrop of our aforesaid observations, as the Medical Council of India does not have any jurisdiction under law to pass any order or regulation against any hospital, pharmaceutical company or any healthcare sector, then any such regulation issued by it cannot have any prohibitory effect on the manner in which the pharmaceutical company like the assessee conducts its business. On the basis of our aforesaid observations, we are unable to comprehend that now when the MCI has no jurisdiction upon the pharmaceutical companies, then where could there be an occasion for concluding that the assessee-company had violated any regulation issued by MCI. We thus, in terms of our aforesaid observations are of the considered view that even if the assessee had incurred expenditure on distribution of "freebies" to doctors and medical practitioners, the same though may not be in conformity with the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (as amended on 10.12.2009), however, as the same only regulates the code of conduct of the medical practitioners/doctors, therefore, in the absence of any prohibition on the pharmaceutical companies in incurring of such sales promotion expenses, the latter cannot be held to have incurred an expenditure for a purpose which is an offence or is prohibited by law. In this regard we are reminded of the maxim "*Expressio Unius Est Exclusio Alterius*", which provides that if a particular expression in the statute is expressly stated for a particular class of assessee, then by implication what has not been stated or expressed in the statute has to be excluded for other class of assesses. Thus, now when the MCI regulations are applicable to medical practitioners registered with the MCI, then the same cannot be made applicable to pharmaceutical companies or other allied healthcare companies.

22. We shall now advert to the CBDT Circular No. 5/2012, dated 01.08.2012. We find that the aforesaid CBDT Circular reads as under:—

"Inadmissibility of expenses incurred in providing freebees to medical practitioner by pharmaceutical and allied health sector industry

Circular No. 5/2012 [F.No. 225/142/2012-ITA.II], dated 1-8-2012

It has been brought to the notice of the Board that some pharmaceutical and allied health sector Industries are providing freebess (freebies) to medical practitioner and their professional associations in violation of the regulations issued by Medical Council of India (the 'Council') which is a regulatory body constituted under the Medical Council Act, 1956

2. The council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10-12-2009 imposing a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from the pharmaceutical and allied health sector Industries.

3. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expenses, if the same has been incurred for a purpose which is either an offence or prohibited by law.

Thus, the claim of any expense incurred in providing above mentioned or similar freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

4. It is also clarified that the sum equivalent to value of freebees enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case. The assessing officers of such medical practitioner or professional associations should examine the same and take an appropriate action.

This may be brought to the notice of all the officers of the charge for necessary action."

We may herein observe that a perusal of the aforesaid CBDT Circular reveals that the "freebies" provided by the pharmaceutical companies or allied health sector industries to medical practitioners or their professional associations in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) regulations, 2002 shall be inadmissible under Sec. 37(1) of the Income-Tax Act, 1961, as the same would be an expense prohibited by the law. We are of the considered view that as observed by us hereinabove, the code of conduct enshrined in the notifications issued by MCI though is to be strictly followed and adhered by medical practitioners/doctors registered with the MCI, however the same cannot impinge on the conduct of the pharmaceutical companies or other healthcare sector in any manner. We find that nothing has brought on record which could persuade us to conclude that the regulations or notifications issued by MCI would as per the law also be binding on the pharmaceutical companies or other allied healthcare sector. Rather, the concession made by the MCI before the

Hon'ble High Court of Delhi in the case of *Max Hospital* v. *MCI* (CWP No. 1334/2013, dated 10.01.2014) fortifies our aforesaid view that MCI has no jurisdiction to pass any order or regulation against any hospital, pharmaceutical company or any healthcare sector. We further find that MCI had by adding Para 6.8.1 to its earlier notification issued as "Indian Medical Council Professional (Conduct, Etiquette and Ethics) Regulations, 2002" had even provided for action which shall be taken against medical practitioners in case they contravene the prohibitions placed on them. We find from a perusal of Para 6.8.1 that in case of receiving of any gift from any pharmaceutical or allied healthcare industry and their sales people or representatives, action stands restricted to the members who are registered with the MCI. In other words the censure/action as had been suggested on the violation of the code of conduct is only for the medical practitioners and not for the pharmaceutical companies or allied health sector industries. We are thus of the considered view that the regulations issued by MCI are qua the doctors/medical practitioners registered with MCI, and the same shall in no way impinge upon the conduct of the pharmaceutical companies. As a logical corollary to it, if there is any violation or prohibition as per MCI regulation in terms of Explanation to Sec. 37(1), then the same would debar the doctors or the registered medical practitioners and not the pharmaceutical companies and the allied healthcare sector for claiming the same as an expenditure.

23. We find that the CBDT as per its Circular No. 5/2012, dated 01.08.2012 had enlarged the scope and applicability of Indian Medical Council Regulation, 2002, by making the same applicable even to the pharmaceutical companies or allied healthcare sector industries. We are of the considered view that such an enlargement of the scope of MCI regulation to the pharmaceutical companies by the CBDT is without any enabling provision either under the Income Tax Act or under the Indian Medical Council Regulations. We are of a strong conviction that the CBDT cannot provide casus omissus to a statute or notification or any regulation which has not been expressly provided therein. Still further, though the CBDT can tone down the rigours of law in order to ensure a fair enforcement of the provisions by issuing circulars for clarifying the statutory provisions, however, it is divested of its power to create a new impairment adverse to an assessee or to a class of assessee without any sanction or authority of law. We are of the considered view that the circulars which are issued by the CBDT must confirm to the tax laws and though are meant for the purpose of giving administrative relief or for clarifying the provisions of law, but the same cannot impose a burden on the assessee, leave alone creating a new burden by enlarging the scope of a regulation issued under a different act so as to impose any kind of hardship or liability on the assessee. We thus, are unable to persuade ourselves to subscribe to the rigours contemplated in the CBDT Circular No. 5/2012, dated 01.08.2012, which we would not hesitate to observe, despite absence of anything provided by the MCI in its regulations issued under the Medical Council Act, 1956, contemplating that the regulation of code of conduct would also cover the pharmaceutical companies and healthcare sector, however provides that in case a pharmaceutical or allied health sector industry incurs any expenditure in providing any gift, travel facility, cash, monetary grant or similar freebies to medical practitioners or their professional associations in violation of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the expenditure incurred on the same shall be disallowed in the hands of such pharmaceutical or allied health sector industry. We are of the considered view that the burden imposed by the CBDT *vide* its aforesaid Circular No. 5/2012, dated 01.08.2012 on the pharmaceutical or allied health sector industries, despite absence of any enabling provision under the Income Tax law or under the Indian Medical Council Regulations, clearly impinges on the conduct of the pharmaceutical and allied health sector industries in carrying out its business. We thus, in the absence of any sanction or authority of

law on the basis of which it could safely be concluded that the expenditure incurred by the assessee-company on sales promotion expenses by way of distribution of articles to the stockists, distributors, dealers, customers and doctors, is in the nature of an expenditure which had been incurred for any purpose which is either an offence or prohibited by law, thus conclude that the same would not be hit by the Explanation to Sec. 37(1) of the Act.

24. Alternatively, we are of the considered view that it is a trite law that a CBDT Circular which creates a burden or liability or imposes a new kind of imparity, cannot be reckoned retrospectively. We are of the considered view that though a benevolent circular may apply retrospectively, but a circular imposing a burden has to be apply prospectively only. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of *Director of Income-tax* V. *S.R.M.B Dairy Farming (P.) Ltd.* (2018) 400 ITR 9 (SC). The Hon'ble Apex Court in its aforesaid judgment has held that beneficial circulars had to be applied retrospectively, while oppressive circulars had to be applied prospectively, observing as under:

"25. It is in this context, the question arises, when the instruction expressly states that the benefit of the said policy is prospective, still can the courts place a construction on such instruction so as to make it retrospective. In this context, the Apex Court in the case of CCE v. *Mysore Electricals Industries Ltd. reported in [2006] 204 ELT 517 (SC) : [2007] 8 RC 1, dealing with the question how a beneficial circular is to be construed, has approached this question in the following manner. At paragraph 13 of the judgment, it is stated that the learned counsel further submitted that the circular being oppressive and against the respondent, has to apply only prospectively and cannot be applied retrospectively. In other words, a beneficial circular has to be applied prospectively. Thus, when the circular is against the assessee they have a right to claim the enforcement of the same prospectively. It is further submitted that for the period in question, trade notices had been issued classifying the circuit breakers under heading No. 85.35 or 85.36. When the approved classification was proposed to be revised to reclassify the single panel circuit breakers under heading No.85.37 of the tariff, such re-classification can take effect only prospectively from the date of communication of the show-cause notice proposing reclassification."*

We find that the aforesaid CBDT Circular No. 5/2012, dated 01.08.2012 had came up for consideration before a coordinate bench of the Tribunal in the case of *DCIT* v. *PHL Pharma (P) Ltd.* [2017] 49 CCH 124 (Mum), wherein the Tribunal after deliberating at length on two aspects viz. (*i*) validity of the circular in the backdrop of enlargement of scope of MCI regulation to the pharmaceutical companies by the CBDT, without any enabling provisions either under the Income Tax Law or under the Indian Medical Council Regulations; and (*ii*). the prospective applicability of the circular, had observed as under:

"5. We have considered the rival contentions made by ld. CIT DR as well as ld. Sr. Counsel, Mr J.D. Mistry, perused the relevant finding given in the impugned orders and material referred to before us. The entire controversy revolves around, whether the expenditures in question incurred by the assessee (a pharmaceutical company) is hit by Explanation 1 below section 37(1) in view of CBDT Circular dated 01.08.2012, interpreting the amendment dated 10.12.2009 brought in Indian Medical Council Regulation 2002 or not. The break-up of sales promotion expenses, which has been disallowed by the AO, are as under:

Sr.No.	*Particulars of expenses*	*Amount (in Rs.)*
1	*Customer Relationship Management expenses (CRM)*	*7,61,96,260*

2	*Key Account Management expenses (KAM)*	*2,56,68,509*
3	*Gift Articles*	*9,20,22,518*
4	*Cost of samples*	*3,60,85,320*
	Total	*22,99,72,607*

The nature of aforesaid expenses has already been explained above. Now whether the nature of such expenditure incurred by the assessee is to be disallowed in view of the CBDT Circular dated 01.08.2012. For the sake of ready reference, the said CBDT Circular No.5/2012 is reproduced hereunder:

"INADMISSIBILITY OF EXPENSES INCURRED IN PROVIDING FREEBEES TO MEDICAL PRACTITIONER BY PHARMACEUTICAL AND ALLIED HEALTH SECTOR INDUSTRY

Circular No. 5/2012 [F. No. 225/142/2012-ITA.II], dated 1-8-2012

It has been brought to the notice of the Board that some pharmaceutical and allied health sector Industries are providing freebees (freebies) to medical practitioners and their professional associations in violation of the regulations issued by Medical Council of India (the 'Council') which is a regulatory body constituted under the Medical Council Act, 1956.

2. The council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10-12-2009 imposing a prohibition on the medical practitioner and their professional associations from taking any Gift, Travel facility, Hospitality, Cash or monetary grant from the pharmaceutical and allied health sector Industries.

3. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law.

Thus, the claim of any expense incurred in providing above mentioned or similar freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

4. It is also clarified that the sum equivalent to value of freebees enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case. The Assessing Officers of such medical practitioner or professional associations should examine the same and take an appropriate action.

This may be brought to the notice of all the officers of the charge for necessary action."

From the perusal of the aforesaid Board Circular, it can be seen that heavy reliance has been placed by the CBDT on the Circulars issued by the Medical Council of India, which is the regulatory body constituted under the 'Medical Council Act, 1956'. One such regulation has been issued is "Indian Medical Council Professional Conduct, Etiquette and Ethics) Regulations, 2002". The said regulation deals with the professional conduct, etiquette and

ethics for registered medical practitioners only. Chapter 6 of the said regulation/notification deals with unethical acts, whereby a physician or medical practitioners shall not aid or abet or commit any of the acts illustrated in clause 6.1 to 6.7 of the said regulation which shall be construed as unethical. Clause 6.8 has been added (by way of amendment dated 10.12.2009) in terms of notification published on 14.12.2009 in Gazette of India. The said clause reads as under:-

"6.8 Code of conduct for doctors and professional association of doctors in their relationship with pharmaceutical and allied health sector industry.

6.8.1 In dealing with Pharmaceutical and allied health sector industry, a medical practitioner shall follow and adhere to the stipulations given below:

(a) *Gifts: A medical practitioner shall not receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives.*

(b) *Travel facilities: A medical practitioner shall not accept a any travel facility inside the country or outside, including rail, air, ship, cruise tickets, paid vacations etc. from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars, workshops, CME programme etc. as a delegate.*

(c) *Hospitality: A medical practitioner shall not accept individually any hospitality like hotel accommodation for self and family members under any pretext.*

(d) *Cash or monetary grants: A medical practitioner shall not receive any cash or monetary grants from any pharmaceutical and allied healthcare industry for individual purpose in individual capacity under any pretext. Funding for medical research, study etc. can only be received through approved institutions by modalities laid down by law/rules/guidelines adopted by such approved institutions, in a transparent manner. It shall always be fully disclosed.*

(e) *Medical Research: A medical practitioner may carry out, participate in work, in research projects funded by pharmaceutical and allied healthcare industries. A medical practitioner is obliged to know that the fulfilment of the following items:*

(i) to (vii) will be an imperative for undertaking any research assignment/project funded by industry for being proper and ethical. Thus, in accepting such a position a medical practitioner shall:-

(i) *Ensure that the particular research proposal(s) has the due permission from the competent concerned authorities.*

(ii) *Ensure that such a research project(s) has the clearance of national/ state/institutional ethics committees/bodies.*

(iii) *Ensure that it fulfils all the legal requirements prescribed for medical research.*

(iv) *Ensure that the source and amount of funding is publicly disclosed at the beginning itself.*

(v) *Ensure that proper care and facilities are provided to human volunteers, if they are necessary for the research project(s).*

(vi) *Ensure that undue animal experimentations are not done and when these are*

necessary they are done in a scientific and a humane way.

(vii) *Ensure that while accepting such an assignment a medical practitioner shall have the freedom to publish the results of the research in the greater interest of the society by inserting such a clause in the MoU or any other document/agreement for any such assignment.*

(f) *Maintaining Professional Autonomy: In dealing with pharmaceutical and allied healthcare industry a medical practitioner shall always ensure that there shall never be any compromise either with his/her own professional autonomy and/or with the autonomy and freedom of the medical institution.*

(g) *Affiliation: A medical practitioner may work for pharmaceutical and allied healthcare industries in advisory capacities, as consultants, as researchers, as treating doctors or in any other professional capacity. In doing so, a medical practitioner shall always:*

(i) *Ensure that his professional integrity and freedom are maintained.*

(ii) *Ensure that patients' interests are not compromised in any way.*

(iii) *Ensure that such affiliations are within the law.*

(iv) *Ensure that such affiliations/employments are fully transparent and disclosed.*

(h) *Endorsement: A medical practitioner shall not endorse any drug or product of the industry publically. Any study conducted on the efficacy or otherwise of such products shall be presented to and/or through appropriate scientific bodies or published in appropriate scientific journals in a proper way".*

6. On a plain reading of the aforesaid notification, which has been heavily relied upon by the department, it is quite apparent that the code of conduct enshrined therein is meant to be followed and adhered by medical practitioners/doctors alone. It illustrates the various kinds of conduct or activities which a medical practitioner should avoid while dealing with pharmaceutical companies and allied health sector industry. It provides guidelines to the medical practitioners of their ethical codes and moral conduct. Nowhere the regulation or the notification mentions that such a regulation or code of conduct will cover pharmaceutical companies or healthcare sector in any manner. The department has not brought anything on record to show that the aforesaid regulation issued by Medical Council of India is meant for pharmaceutical companies in any manner. On the contrary, before us the learned senior counsel, Shri Mistry brought to our notice the judgment of Hon'ble Delhi High Court in the case of Max Hospital v. MCI in WPC 1334/2013 judgment dated 10.01.2014, wherein the Medical Council of India admitted that the Indian Medical Council Regulation of 2002 has jurisdiction to take action only against the medical practitioners and not to health sector industry. Relevant portion of the said judgment reads as under:

"6. The Petitioner's grievance is two fold. Firstly, that since the Medical Council of India (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the Regulations) have been framed in exercise of the power conferred under Section 20A read with Section 33(m) of the Indian Medical Council Act, 1956, these regulations do not govern or have any concern with the facilities, infrastructure or running of the Hospitals and secondly, that the Ethics Committee of the MCI acting under the Regulations had no jurisdiction to pass any direction or judgment on the infrastructure of any hospital which power rests solely with the concerned State Govt. The case of the Petitioner is that the Petitioner hospital is governed by the Delhi Nursing Homes Registration Act, 1953. It is urged that in fact, an inspection was also carried out on

22.07.2011 by Dr. R.N. Dass, Medical Superintendent (Nursing Home) under the Directorate of Health Services, Govt. of NCT of Delhi and the necessary equipments and facilities were found to be in order which negates the observations dated 27.10.2012 of the Ethics Committee of the MCI. It is also the plea of the Petitioner hospital that the Petitioner was not provided an opportunity of being heard and thus the principles of natural justice were violated.

7. In the counter affidavit filed by the Respondents, it is not disputed that the MCI under the 2002 Regulations has jurisdiction limited to taking action only against the registered medical practitioners. Its plea however, is that it has not passed any order against the Petitioner hospital therefore; the Petitioner cannot have any grievance against the impugned order. . . . .

8. It is clearly admitted by the Respondent that it has no jurisdiction to pass any order against the Petitioner hospital under the 2002 Regulations. In fact, it is stated that it has not passed any order against the Petitioner hospital.

Thus, I need not go into the question whether the adequate infrastructure facilities for appropriate post-operative care were in fact in existence or not in the Petitioner hospital and whether the principles of natural justice had been followed or not while passing the impugned order. Suffice it to say that the observations dated 27.10.2012 made by the Ethics Committee do reflect upon the infrastructure facilities available in the Petitioner hospital and since it had no jurisdiction to go into the same, the observations were uncalled for and cannot be sustained. " [Emphasis added is ours]

From the aforesaid decision, it is ostensibly clear that the Medical Council of India has no jurisdiction to pass any order or regulation against any hospital or any healthcare sector under its 2002 regulation. So once the Indian Medical Council Regulation does not have any jurisdiction nor has any authority under law upon the pharmaceutical company or any allied health sector industry, then such a regulation cannot have any prohibitory effect on the pharmaceutical company like the assessee. If Medical Council regulation does not have any jurisdiction upon pharmaceutical companies and it is inapplicable upon Pharma companies like assessee then, where is the violation of any of law/regulation? Under which provision there is any offence or violation in incurring of such kind of expenditure. The relevant provision of section 37(1) reads as under:

"(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the heads "profits and gains of business or profession"

Explanation 1 – For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."

The aforesaid provision applies to an assessee who is claiming deduction of expenditure while computing his business income. The Explanation provides an embargo upon allowing any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law. This means that there should be an offence by an assessee who is claiming the expenditure or there is any kind of prohibition by law which is applicable to the assessee. Here in this case, no such offence of law has been brought on record, which prohibits the

pharmaceutical company not to incur any development or sales promotion expenses. A law which is applicable to different class of persons or particular category of assessee, same cannot be made applicable to all. The regulation of 2002 issued by the Medical Council of India (supra), provides limitation/curb/prohibition for medical practitioners only and not for pharmaceutical companies. Here the maxim of "Expressio Unius Est Exclusio Alterius" is clearly applicable, that is, if a particular expression in the statute is expressly stated for particular class of assessee then by implication what has not been stated or expressed in the statute has to be excluded for other class of assessee. If the Medical Council regulation is applicable to medical practitioners then it cannot be made applicable to Pharma or allied health care companies. If section 37(1) is applicable to an assessee claiming the expense then by implication, any impairment caused by Explanation 1 will apply to that assessee only. Any impairment or prohibition by any law/regulation on a different class of person/assessee will not impinge upon the assessee claiming the expenditure under this section.

7. Before us the learned CIT DR strongly relied upon the fact that CBDT Circular, while clarifying the applicability of Explanation 1 to section 37(1) on medical practitioners and pharmaceutical companies have interpreted that Indian Medical Council Regulation is applicable for pharmaceutical companies also. He also brought to our notice that another notification was issued by Indian Medical Council which was published on 01.12.2016 which further prohibits such kind of embargo on medical practitioners and have added para 6.8.1 and also given instances of action which shall be taken upon medical practitioners. The relevant clause of the said notification as relied upon by him is reproduced hereunder:

6.8. Code of conduct for doctors in their relationship with pharmaceutical and allied health sector industry.

The Section 68.1(b) shall be substituted in terms of Notification published on 01.02.2016 in Gazette of India, as under:

(b) Travel facilities: A medical practitioner shall not accept any travel facility inside the country or outside, including rail, road, air, ship, cruise tickets, paid vacation, etc., from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars, workshops, CME Programme etc. as a delegate

(iii) Action to be taken by the Council for violation of section 6.8 as amended vide notification dated 10/12/2009, shall be prescribed by further amending the Section 6.8.1 as under:-

SECTION	*ACTION*
6.8.1 In dealing with pharmaceutical and allied health sector industry, a medical practitioner shall follow and adhere to the stipulations given below: -	
(a) Gifts: A medical practitioner shall not receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives;	*Gifts more than Rs. 1,000/ - upto Rs. 5,000/- : Censure* *Gifts more than Rs. 5,000/- upto Rs. 10,000/- : Removal from Indian Medical Register or State Medical Register for 3 (three) months.* *Gifts more than Rs. 10,000/ - to Rs. 50,000/- : Removal from Indian*

	Medical Register or State Medical Register for 6(six) months. *Gifts more than Rs. 50,000/- to Rs. 1,00,000/ - : Removal from Indian Medical Register or State Medical Register for 1 (one) year.* *Gifts more than Rs. 1,00,000/- : Removal for a period of more than 1 (one) year from Indian Medical Register or State Medical Register.*
(b) Travel facilities: A medical practitioner shall not accept any travel facility inside the country or outside, including rail, road, air, ship, cruise tickets, paid vacations etc. from any pharmaceutical or allied healthcare industry or their representatives for self and family members for vacation or for attending conferences, seminars, workshops, CME programme etc. as a delegate.	*Expenses for travel facilities more than Rs. 1,000/ - upto Rs. 5,000/ -: Censure* *Expenses for travel facilities more than Rs. 5,000/- upto Rs. 10,000/-: Removal from Indian Medical Register or State Medical Register for 3 (three) months.* *Expenses for travel facilities more than Rs.10,000/-to Rs. 50,000/-: Removal from Indian Medical Register or State medical Register for 6 (six) months.* *Expenses for travel facilities more than more than Rs. 50,000/- to Rs. 1,00,000/-: Removal from Indian Medical Register or State Medical Register for 1 (one) year.* *Expenses for travel facilities more than Rs. 1,00,000/-: Removal for a period of more than 1 (one) year from Indian Medical Register or State Medical Register.*
(c) Hospitality: A medical practitioner shall not accept individually any hospitality like hotel accommodation for self and family members under any pretext.	*Expenses for Hospitality more than Rs. 1,000/-upto Rs. 5,000/-: Censure* *Expenses for Hospitality more than Rs. 5,000/- upto Rs. 10,000/-: Removal from Indian Medical Register or State Medical Register for 3 (three) months.* *Expenses for Hospitality more than Rs. 10,000/- to Rs. 50,000/-: Removal from Indian Medical Register or State medical Register for 6 (six) months.* *Expenses for Hospitality more than*

	more than Rs. 50,000/- to Rs. 1,00,000/: Removal from Indian Medical Register or State Medical Register for 1 (one) year.
	Expenses for Hospitality more than Rs. 1,00,000/-: Removal for a period of more than 1 (one) year from Indian Medical Register or State Medical Register.
(d) Cash or monetary grants:-	*Cash or monetary grants more than Rs. 1,000/- upto Rs. 5,000/-: Censure.*
A medical practitioner shall not receive any cash or monetary grants from any pharmaceutical and allied healthcare industry for individual purpose in individual capacity under any pretext. Funding for medical research, study etc. can only be received through approved institutions by modalities laid down by law/rules/guidelines adopted by such approved institutions, in a transparent manner. It shall always be fully disclosed.	*Cash or monetary grants more than Rs. 5,000/-upto Rs.10,000/-: Removal from Indian Medical Register or State Medical Register for months.*
	Cash or monetary grants more than Rs.10,000/- to Rs. 50,000/-: Removal from Indian Medical Register or State Medical Register for 6 (six) months.
	Cash or monetary grants more than more than Rs. 50,000/- to Rs. 1,00,000/-: Removal from Indian Medical Register or State Medical Register for 1 (one) year.
	Cash or monetary grants more than Rs. 1,00,000/-: Removal for a period of more than 1 (one) year from Indian Medical Register or State Medical Register.

From the aforesaid notification, ld. CIT DR submitted that so many violations and censures have been prescribed for any expenditures/or benefit given to doctors, thus, violation of such guidelines for incurring such kind of expenditures cannot be held to be allowable expenditure. CBDT is well within its power to clarify and interpret the law and prohibit allowance of any expenditure which violates any statute or is in nature of offence.

8. From a perusal of above amendment/notification in the MCI regulation, it is quite clear again that same is applicable for medical practitioners only and the censure/action which has been suggested by it is only on medical practitioners and not for pharmaceutical companies or allied health sector industries. The violation of the aforesaid regulation would not only ensure a removal of a doctor from the Indian Medical Register or State Medical Register for a certain period of time and it does not impinge upon the conduct of pharmaceutical companies. This important distinction has to be kept in mind that regulation issued by Medical Council of India is qua the doctors/medical practitioners and not for the pharmaceutical companies. As a logical corollary to it, if there is any violation or prohibition as per MCI regulation in terms of section 37(1) r.w. Explanation1, then it is only meant for medical practitioners and not for pharmaceutical company (Assessee Company) for claiming the expenditure.

9. Adverting to the contention of the Ld. CIT DR that CBDT is well empowered to issue such clarification, it is seen that the CBDT Circular dated 01.08.2012 (supra) in its clarification has enlarged the scope and applicability of 'Indian Medical Council Regulation 2002' by making it applicable to the pharmaceutical companies or allied health care sector industries. Such an enlargement of scope of MCI regulation to the pharmaceutical companies by the CBDT is without any enabling provisions either under the provisions of Income Tax Law or by any provisions under the Indian Medical Council Regulations. The CBDT cannot provide casus omissus to a statute or notification or any regulation which has not been expressly provided therein. The CBDT can tone down the rigours of law and ensure a fair enforcement of the provisions by issuing circulars and by clarifying the statutory provisions. CBDT circulars act like 'contemporanea expositio' in interpreting the statutory provisions and to ascertain the true meaning enunciated at the time when statute was enacted. However the CBDT in its power cannot create a new impairment adverse to an assessee or to a class of assessee without any sanction of law. The circular issued by the CBDT must confirm to tax laws and for purpose of giving administrative relief or for clarifying the provisions of law and cannot impose a burden on the assessee, leave alone creating a new burden by enlarging the scope of a different regulation issued under a different act so as to impose any kind of hardship or liability to the assessee. In any case, it is trite law that the CBDT circular which creates a burden or liability or imposes a new kind of imparity, same cannot be reckoned retrospectively. The beneficial circular may apply retrospectively but a circular imposing a burden has to be applied prospectively only. Here in this case the CBDT has enlarged the scope of 'Indian Medical Council Regulation, 2002' and made it applicable for the pharmaceutical companies. Therefore, such a CBDT circular cannot be reckoned to have retrospective effect. The same CBDT circular had come up for consideration before the co-ordinate Bench of the ITAT, Mumbai Bench in the case of Syncom Formulations (I) Ltd. (in ITA Nos. 6429 & 6428/Mum/2012 for A.Ys. 2010-11 and 2011-12, vide order dated 23.12.2015), wherein Tribunal held that CBDT circular would not be not be applicable in the A.Ys. 2010-11 and 2011-12 as it was introduced w.e.f. 1.8.2012.

10. From the perusal of the nature of expenditure incurred by the assessee, it is seen that under the head "Customer Relationship Management", the assessee arranges national level seminar and discussion panels of eminent doctors and inviting of other doctors to participate in the seminars on a topic related to therapeutic area. It arranges lectures and sponsors knowledge upgrade course which helps pharmaceutical companies to make aware of the products and medicines manufactured and launched by it. Under Key Account Management, the assessee makes endeavour to create awareness amongst certain class of key doctors about the products of the assessee and the new developments taking place in the area of medicine and providing correct diagnosis and treatment of the patients. The said activities by the assessee are to make the doctors aware of its products and research work carried out by it for bringing the medicine in the market and its results are based on several levels of tests and approvals. Unless the pharmaceutical companies make aware of such kind of products to key doctors or medical practitioners, then only it can successfully launch its products/medicines. This kind of expenditure is definitely in the nature of sales and business promotion, which has to be allowed.

Coming to the gift articles and free samples of medicines, it is seen that the assessee gives various kind of articles like, diaries, pen sets, calendars, paper weights, injection boxes etc. embossed with bold logo of its brand name and the product name so that the doctors remembers the brand of the assessee and also the name of the medicine. All the gift articles, as pointed out by the assessee before the authorities below and also before us are very cheap and

low cast articles which bears the name of assessee and it is purely for the promotion of its product, brand reminder, etc. These articles cannot be reckoned as freebies given to the doctors. Even the free sample of medicine is only to prove the efficacy and to establish the trust of the doctors on the quality of the drugs. This again cannot be reckoned as freebies given to the doctors but for promotion of its products. The pharmaceutical company, which is engaged in manufacturing and marketing of pharmaceutical products, can promote its sale and brand only by arranging seminars, conferences and thereby creating awareness amongst doctors about the new research in the medical field and therapeutic areas, etc. Every day there are new developments taking place around the world in the area of medicine and therapeutic, hence in order to provide correct diagnosis and treatment of the patients, it is imperative that the doctors should keep themselves updated with the latest developments in the medicine and the main object of such conferences and seminars is to update the doctors of the latest developments, which is beneficial to the doctors in treating the patients as well as the pharmaceutical companies. Further as pointed out and concluded by the learned CIT(A) there is no violation by the assessee in so far as giving any kind of freebies to the medical practitioners. Thus, such kind of expenditures by a pharmaceutical companies are purely for business purpose which has to be allowed as business expenditure and is not impaired by EXPLANATION 1 to section 37(1).

11. Before us, the Ld. CIT DR has also much harped upon the decision of the Hon'ble Himachal Pradesh High Court in the case of Confederation of Indian Pharmaceutical Industry (SS) v. CBDT (supra), in support of the argument that CBDT Circular has been approved and confirmed by the High Court and therefore, it has a huge binding precedence. From the perusal of the said judgment of the Hon'ble High Court, it is seen that in that case the validity of Circular No.5/12 dated 1.8.2012 was challenged. The Hon'ble High Court though upheld the validity of the said circular but with a rider that if the assessee satisfies the assessing authority that the expenditure is not in violation of the regulation framed by the medical council, then it may legitimately claim the deduction. The assessee has to satisfy the AO that the expenditure is not in violation of the Medical Council regulation. Thus, if the assessee brings out that the MCI regulation is not applicable to the assessee before the AO, the same cannot be applied blindly.

12. At the time of hearing, our attention was also drawn to the decision of Tribunal of our Co-ordinate Bench in the case of 'Liva Healthcare Limited ITA Nos. 904 & 945/Mum/2013', decided vide order dated 12.09.2016. In counter, to this decision the learned counsel, Shri JD Mistry distinguished the said judgment and submitted that the facts of the case in the Liva Healthcare (supra) were substantially different from the facts of the present case. In the case of Liva Healthcare, the Hon'ble Tribunal disallowed such expenses u/s. 37(1) of the Act on the ground that they were not incurred wholly and exclusively for the purpose of business as the same were incurred to create good relations with the doctors in lieu of expected favours from doctors for recommending to the patients the pharmaceutical products dealt with by the company to generate more and more business and profits for the assessee-company. The Tribunal also recorded the fact that the spouse of the doctors also accompanied the doctors for overseas trips to Istanbul and expenses were incurred for cruise travels to island, gala dinner, cocktails, gala entertainment etc. of such doctors. In assessee's case it is an admitted fact that expenses have not been incurred for the purpose personal benefit/enjoyment of the doctors or their spouses. In the case of Liva, the question as to whether such IMC Regulations can be applicable to Pharma Companies was not argued before the Hon'ble Bench. He reiterated that the Hon'ble Delhi High Court in the case of Max Hospital (supra) and the Jurisdictional Tribunal in the case of Syncom (supra) have held that such IMC Regulations apply only to

medical practitioners. He further submitted that the Tribunal in the case of ACIT v. Liva Healthcare Ltd. (ITA 847/Mum/2012) for A.Y. 2008-09, has decided similar issue in favour of the assessee. However, in A.Y. 2009-10, Hon'ble Tribunal while noting the fact that consistency has to be adopted, distinguished the order of A.Y. 2008-09 as under:

"The assessee has contended that in the immediately preceding assessment year the Tribunal has decided the issue in favour of the assessee in ITA NO. 388/Mum/2012 for assessment year 2008-09. In our considered view, principles of Res judicata is not applicable to income tax proceedings although we are fully agreeable that principles of consistency is to be maintained (Hon'ble Supreme Court decision in Radha Soami Satsang v. CIT (1992) 193 ITR 321 (SC) but in the instant assessment year, we have observed that these overseas trips for Doctors and their spouses were organized by the assessee whereby no details of the contents of seminar, if any conducted by the assessee overseas has been brought on record and also even the spouses accompanied the Doctors to the overseas trip which included cruise visit to island, gala dinners, cocktail, gala entertainment etc. rather than being directed towards seminar for product information dissemination or directed towards knowledge enhancement or knowledge sharing oriented as no details of seminar and its course content is brought on record rather the trip is directed towards leisure and entertainment of Doctors and their spouses which in our view appears to be clearly a distinguishable feature in this year enabling us to take a divergent view and the expenses incurred by the assessee cannot be allowed as business expenditure u/s. 37 of the Act as it is clearly hit by explanation to Section 37 of the Act being against public policy as unethical prohibited by law.

In view of the above, he pointed out that in the above decision for A.Y. 2009-10 in the case of Liva Healthcare, there was a specific finding of a fact that no details have been filed with respect to any seminar has been conducted for doctors and that the trips were directed towards leisure and entertainment of doctors and their spouses. This was a distinguishable feature for the Hon'ble Tribunal to take a contrary view from A.Y. 2008-09. He further submitted that the Hon'ble Tribunal in the case of Liva Healthcare Ltd. v. ACIT (ITA No. 4791/Mum/2014) for A.Y. 2010-11 has followed the decision of Liva Healthcare (supra) for A.Y. 2008-09 and has decided this issue in favour of the assessee. This, further brings out the fact that the Hon'ble Tribunal disallowed the expenses u/s. 37(1) of the Act in the case of Liva Healthcare for A.Y. 2009-10 only on the ground that the same were not incurred wholly and exclusively for the purpose of business.

13. Apart from the aforesaid distinguishing features as highlighted by the learned senior counsel, we find that on the facts itself in the case of Liva Healthcare (2009-2010) (supra), there was a clear cut material on record that the Doctors along with their spouses were taken to foreign tours and cruise travel etc., in lieu of expected favours from doctors. In the light of these facts and material the Tribunal has decided the issue against the assessee by not following the earlier year precedence and subsequent year orders of the same assessee. As brought on record before us, we find that similar issue of allowance of such expenditure in the case of pharmaceutical companies has been decided in favour of the assessee, in the case of UCB India Pvt. Ltd. v. ITO (ITA No. 6681/Mum/2013 order dated 13.05.2016, wherein it was held that CBDT circular cannot have a retrospective effect. This judgment was lost sight of by the bench. In any case on careful perusal of the Tribunal order in the case of Liva Healthcare (supra) we find that the Tribunal though has incorporated the relevant provisions and clauses of the 'Indian Medical Council Regulation 2002', however, has not elaborated or dwell upon as to how this MCI regulation which is strictly meant for medical practitioners and doctors can be made applicable to pharmaceutical companies. There has to be some enabling provision or

specific clause in the said regulation whereby the pharmaceutical companies are barred from conducting seminars or conferences by sponsoring the doctors. The entire conduct relates to doctors and medical practitioners and lists out the censures and fines imposed upon them. What has not been provided in the MCI regulation cannot be supplied either by the court or by the CBDT. There has to be express provision under the law whereby pharmaceutical companies are prohibited to conduct conferences or seminar or give free samples. In the Tribunal decision of Liva Healthcare, strong reference has been made to Hon'ble Himachal Pradesh High Court (supra), that the said CBDT circular has been upheld. On this aspect we have already discussed in detail herein above that, firstly, High Court itself carves out a rider that assessee is free to demonstrate before the AO that this circular is not applicable on facts of the case; and secondly, CBDT circular which creates new impairment and imposes disallowbility not envisaged in any of the Act or regulation cannot be reckoned to be retrospective. Another strong reference has been made to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT v. Kap Scan and Diagnostic Centre (P.) Ltd. [2012] 25 taxmann.com 92, wherein commission was paid to the private doctors for referring the patients for diagnosis to the assessee company. In background of these facts and issues involved, the Hon'ble High Court held that said payment of commission is wrong and is opposed to be a public policy. It should be discouraged as it is not a fair practice. The ratio of said decision cannot be applied on the facts of the present case because there is no violation of any law or anything which is opposed to public policy. Similarly, there is reference to the decision of Hon'ble Supreme Court in the case of Eskayef (Now Known as Smithkline Beecham) Pharmaceuticals (India) Limited v. CIT (2000) 111 Taxman 561(SC), which was given in context of Section 37(3A) of the Act. In the said case the assessee had claimed expenditure on distribution of physician's samples u/s. 37. In the background of such claim the Hon'ble Apex court held that, if the expenditure falls within the bare minimum it will not be caught by subsection (3A) of section 37. On the contrary, the Hon'ble Apex Court observed that physicians samples are necessary to ascertain the efficacy of medicine and introduce it in the market for circulation and it is only by this method the purpose is achieved. In such cases giving a physician samples for reasonable period is essential to the business of manufacture and sale of medicine. It is only if a particular medicine has been introduced by the market and its uses are established then giving of free samples could only be the measure of sale/promotion and development would thus be hit by subsection (3A). Said decision no way prohibits the nature of expenditure which has been incurred in the case of the assessee. Therefore, such a reference to a Hon'ble Apex Court decision is not germane to the issue involved. Thus, in our opinion, the aforesaid decision of this Tribunal is clearly distinguishable and cannot be held to be applicable and also we have already given our independent finding as to allowability of expenses in the hands of the assessee as business expenditure."

Still further, the coordinate bench of the Tribunal in the case of *India Medtronic Pvt. Ltd.* v. *DCIT* [2018] 52 CCH 43 (Mum), following the view taken by the Tribunal in the case of *PHL Pharma Pvt. Ltd.* (*supra*), had concluded that the MCI guidelines are only applicable to the doctors and the medical professionals registered with the council, and cannot govern the other tax entities like drug manufacturing companies or individuals other than the doctors. In the backdrop of the aforesaid observations, the Tribunal had observed that the MCI guidelines cannot decide the allowability or otherwise of an expenditure in the hands of such other entities under the Income-tax Act, 1961. It was further observed by the Tribunal that the Income tax Act is an independent code in itself and the business income of an assessee has to be assessed and taxed as envisaged under the provisions of the Act. On the basis of the limited scope of applicability of the MCI guidelines to a particular class of the society *viz*. doctors or medical

practitioners registered with the council, the Tribunal had concluded that the guidelines issued by MCI would only regulate the code of conduct of the doctors and the medical practitioners registered with it and would not be applicable to other entities.

25. We thus, in the backdrop of the aforesaid settled position of law as regards the prospective applicability of an oppressive circular, are of the considered view that as the CBDT as per its Circular No. 5/2012, dated 01.08.2012 had enlarged the scope of Indian Medical Council Regulation, 2002, and had made the same applicable to the pharmaceutical companies, thus the same cannot be reckoned to have a retrospective effect. We find that a coordinate bench of the Tribunal viz. ITAT, Mumbai in the case of *Syncom Formulations (I) Ltd.* v. *DCIT*-8(3), Mumbai (ITA No. 6428 & 6429/Mum/2012, dated 23.12.2015) for A.Ys 2010-11 and 2011-12 had concluded that the aforesaid CBDT Circular No. 5/2012, dated 01.08.2012 would not be applicable to the A.Ys 2010-11 and 2011-12, as the same was introduced w.e.f. 01.08.2012. We thus, in terms of our aforesaid observations are of the considered view that the aforementioned CBDT Circular No. 5/2012, dated 01.08.2012 would not be applicable to the case of the assessee before us for A.Y. 2011-12.

26. We shall now advert to the judicial pronouncements which had been relied upon by the ld. D.R before us :

(*i*) *DCIT, Circle-13(1), New Delhi* v. *Ochoa Laboratories Ltd., Noida* (ITA No. 4114/Del/2009, dated 25.08.2017)

That the aforesaid order passed by the ITAT, Delhi pertained to the allowability of expenses incurred by the assessee in respect of hotel bookings at New Delhi, Cochin or Kochi against "Dermacon Conference" at Hyderabad, providing free air travel, stay and food in hotels, local car conveyance etc., which were held by the Tribunal as being akin to giving commissions to the doctors for prescribing medicines manufactured by the assessee company. The facts involved in the said case being distinguishable as against that of the present assessee before us, thus would not assist the case of the revenue.

(*ii*) *ACIT, Circle-6(3), Mumbai* v. *Liva Healthcare Ltd.*, Mumbai (ITA No. 904/Mum/2013, dated 12.09.2016)

In the aforesaid order passed by the coordinate bench of the Tribunal, expenses were incurred by the assessee for creating good relations with the doctors in lieu of expected favours from them for recommending to the patients the pharmaceuticals products of the company. We find that the Tribunal while adjudicating the case of DCIT-8(2), Mumbai v. PHL Pharma (P.) Ltd. had considered the aforesaid order of the Tribunal.

(*iii*) *Confederation of Indian Pharmaceutical Industry (SSI)* v. *The Central Board of Direct Taxes* (CWP No. 10793 of 2012, dated 26.12.2012)(HP):

We find that the aforesaid judgment of the Hon'ble High Court of Himachal Pradesh was considered by the ITAT, Mumbai Bench "C", Mumbai in the case of *DCIT-8(2), Mumbai* v. *PHL Pharma (P.) Ltd.*

The Tribunal after considering the aforesaid judgment had observed that as held by the High Court, if the assessee was able to establish that the MCI regulation was not applicable to the assessee, then the same could not be blindly applied in its case.

(*iv*) *CIT* v. *Kap Scan and Diagnostic Centre (P.) Ltd.* [2012] 344 ITR 476 (P&H):

We find that the judgment in the aforesaid case was rendered in context of the commission paid by the assessee-company which was running a scanning and a diagnostic centre to the private doctors for referring patients for diagnosis/scanning. Thus, the facts involved in the case before the High Court are distinguishable as against those in the case of the assessee before us. Still further, the said judgment was also considered by the Tribunal while passing the order in the case of DCIT-8(2), Mumbai v. PHL Pharma (P.) Ltd.

27. We thus, in terms of our aforesaid observations conclude that the assessee was duly entitled for claim of sales promotion expenses of Rs. 9,70,82,317/- incurred on the distribution of articles to the stockists, distributors, dealers, customers and doctors. Thus, the order of the CIT(A) sustaining the disallowance of the sales promotion expenses to the extent of Rs. 66,49,685/- is set aside. In terms of our aforesaid observations the entire disallowance of the sales promotion expenses of Rs. 9,70,82,317/-made by the AO is deleted.

28. The appeal of the assessee viz. ITA No. 5553/Mum/2014 is allowed and the appeal of the revenue *viz*. ITA No. 6129/Mum/2014 is dismissed.

ITA No. 5479 & 5747/Mum/2015 A.Y. 2012-13

29. We shall now take up the cross appeals filed by the assessee and the revenue for A.Y. 2012-13. The assessee assailing the order passed by the CIT(A) to the extent he had sustained the disallowance of sales promotion expenses of Rs. 77,42,416/-, has raised before us the following grounds of appeal

"1. *For that the Ld. CIT(A) has erred in sustaining disallowance of sales promotion expense amounting to Rs.77,42,416/-.*

2. *For that the Ld. CIT(A) has erred in holding that expenditure incurred for distribution of costly articles (exceeding Rs.750/- each article) are freebies to doctors and professionals.*

3. *For that the Ld. CIT(A) has erred in holding that the such expenditures (exceeding Rs.750/- each articles) have been incurred in violation of CBDT circular No. 5/2012 dated 01.08.2012 and are against regulations issued by Medical Counsel of India.*

4. *For that the Ld. CIT(A) has erred in holding that such expenditures are prohibited by law and thus hit by Explanation to section 37(1).*

5. *For that the sustenance of disallowance of Rs.77,42,416/- is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.*

6. *For that the whole order sustaining disallowance of Rs.77,42,4161- is bad in fact and law of the case and is fit to be modified.*

7. *For that the whole order is bad in fact and law of the case and is fit to be modified.*

8. *For that the other grounds, if any, shall be urged at the time of hearing of the appeal"*

30. The revenue on the other hand has assailed the order of the CIT(A) for A.Y. 2012-13 on the ground that he had erred in deleting the disallowance of sales promotion expenses of Rs. 10,60,02,763/- by restricting the disallowance of the same only in respect of the expenditure incurred by the assessee on sales promotion articles costing more than Rs. 750/- per article, by raising before us the following grounds appeal :

"On the facts and in the circumstances of the case and in Law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. *The order of the CIT(A) is opposed to law and fact of the case.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing all sales promotion articles costing up to the cost price of Rs. 750/- each u/s. 37(1), on the ground that these are wholly and exclusively incurred for the assessee's business purposes when supporting evidences have not been furnished by the assessee.*
3. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing sales promotion expenses, without appreciating the prohibition imposed b the Medical Council of India on medical practitioners from accepting gifts, travel facilities, hospitality, cash or monetary grants (freebies) from pharmaceutical and allied healthcare sector Industry and the Circular No. 5/2012 issued by CBDT not to allow such expenses which are prohibited by law."*

31. Briefly stated, the assessee-company had e-filed its return of income for A.Y. 2012-13 on 21.09.2012, declaring a total income of Rs. 270,68,80,787/-. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2) of the Act. The A.O inter alia carrying out a disallowance of Rs. 11,37,45,179/- of sales promotion expenses assessed the income of the assessee-company under Sec. 143(3) at Rs. 282,06,25,970/-. The book profit of the assessee under Sec. 115JB was computed by the A.O at Rs. 365,71,93,685/-. The A.O while framing the assessment had disallowed the entire amount of sales promotion expenses of Rs. 11,37,45,179/- for the reason *viz.* (*i*) the Medical Council of India (MCI) had imposed prohibition on medical practitioners from accepting gifts, travel facilities, hospitalities, cash or monetary grants (known as "freebies") from pharmaceutical and allied health care sector industry; and (*ii*) the CBDT circular No. 5/2012 issued *vide* F.No. 225/142/2012-ITA.II, dated 01.08.2012 had clarified that such "freebies" shall be inadmissible under Sec. 37(1) of the Act, being an expense prohibited by the law. On the basis of the aforesaid deliberations the A.O being of the view that the expenditure incurred by the assessee on distribution of "freebies" was inadmissible as per the Explanation to Sec. 37(1) of the Act, thus disallowed the entire amount of sales promotion expenses of Rs. 11,37,45,179/- debited by the assessee under the said head of expenditure.

32. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee before him, observed that the issue under consideration was squarely covered by the order passed by his predecessor while disposing off the appeal of the assessee for the immediately preceding year viz. A.Y. 2011-12. The CIT(A) following the view taken by his predecessor, thus restricted the disallowance of the sales promotion expenditure to the extent of Rs. 77,42,416/- *i.e* the expenditure which was incurred by the assessee on sales promotion articles costing more than Rs. 750/-per article. In the backdrop of his aforesaid observations the CIT(A) restricted the disallowance to the extent of Rs. 77,42,416/- and deleted the balance addition/disallowance of Rs. 10,60,02,763/-[Rs. 11,37,45,179/- (-) Rs. 77,42,416/-].

33. That both the assessee and the revenue being aggrieved with the order of the CIT(A) has carried the matter by way of cross appeals before us. We find that the issue involved in the present case *viz.* disallowance of sales promotion expenditure remains the same, as was there before us in the assesses own case for the immediately preceding year *viz.* A.Y. 2011-12 as had

been adjudicated by us hereinabove, except for the fact that in the present case the CBDT Circular No. 5/2012, dated 01.08.2012 had came into force during the year under consideration. Be that as it may, we are of the considered view that as deliberated by us at length hereinabove, the aforementioned CBDT Circular No. 5/2012, dated 01.08.2012 had enlarged the scope of MCI regulations and made the same applicable to the pharmaceutical companies, without any enabling provision either under the Income Tax Act or the Indian Medical Council Regulations. We are of the considered view that as observed by us hereinabove, the CBDT by extending the scope and gamut of the MCI Regulation had by so doing traversed beyond the scope of its jurisdiction and provided casus omissus to the regulation issued by MCI, which though had not been expressly provided therein. We thus, being of the view that as the CBDT is divested of its power to create a new impairment adverse to an assessee or to a class of assessee without any sanction or authority of law, therefore, are unable to persuade ourselves to subscribe to the rigours contemplated as regards the pharmaceutical companies or the allied healthcare sector in the CBDT Circular No. 5/2012, dated 01.08.2012. We would not hesitate to observe that despite an absence of enlargement of the scope of the regulations issued by the MCI under the Medical Council Act, 1956, therein bringing within the sweep of its code of conduct the pharmaceutical companies and allied health sector industry, the CBDT had however in all its wisdom provided that in case a pharmaceutical or allied health sector industry incurs any expenditure in providing any gift, travel facility, cash, monetary grant or similar freebies to medical practitioners and their professional associations in violation of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the same shall be disallowed in the hands of such pharmaceutical or allied health sector industry. We are unable to persuade ourselves to subscribe to the burden imposed by the CBDT *vide* its aforesaid Circular No. 5/2012, dated 01.08.2012 on the pharmaceutical or allied healthcare sector industries, which as observed by us hereinabove, despite there being an absence of any enabling provisions under the Income Tax law or the Indian Medical Council Regulations, therein contemplating an authority to regulate the conduct of the pharmaceutical and allied health sector industries, had clearly impinged on the conduct of business by the latter. We thus, in the absence of any sanction or authority of law on the basis of which it could safely be concluded that the assessee-company which is engaged in the business of manufacturing and sale of pharmaceuticals and allied products, had in the garb of sales promotion expenses incurred expenditure in respect of articles distributed to the stockists, distributors, dealers, customers and doctors, for a purpose which is either an offence or prohibited by law, are thus of the considered view that such expenditure incurred by the assessee would not be hit by the Explanation to Sec. 37(1) of the Act.

34. We thus, in terms of our aforesaid observations conclude that the assessee was duly entitled for claim of sales promotion expenses of Rs. 11,37,45,179/- incurred on the distribution of articles to the stockists, distributors, dealers, customers and doctors. Thus, the order of the CIT(A) sustaining the disallowance of the sales promotion expenses to the extent of Rs, 77,42,416/- is set aside. The entire disallowance of the sales promotion expenses of Rs. 11,37,45,179/- made by the A.O is deleted.'

This decision has subsequently been followed by Tribunal in cross-appeals for AY 2013-14 vide ITA Nos.5807,6223/Mum/2017 order dated 28/06/2019. Therefore, facts being *pari-materia* the same, respectfully following the aforesaid consistent view of the Tribunal, we hold that the

entire expenditure of Rs.1498.07 Lacs incurred by assessee on sales promotional article would be an allowable deduction. The grounds raised by the assessee, in this regard stand allowed whereas the grounds raised by revenue stand dismissed. The impugned order stand modified to that extent.

5.1 Regarding disallowance of medical conference expenditure, it is the submissions of Ld. Sr. Counsel that this expenditure was never disallowed in earlier years but the same has been disallowed for the first time in this year. Nevertheless, since the reasoning applied by revenue to disallow the same is *pari-materia* the same as applied while disallowing expenditure on sales promotional articles, the arguments as well as reliance on various judicial pronouncements as advanced to contest that expenditure, would equally apply to this issue also. For the said submissions, the Ld. Sr. Counsel drew our attention to the assessment orders passed u/s 143(3) for AYs 2008-09 to 2013-14 as placed in separate paper-book. It has further been submitted that Ld. CIT initiated proceedings u/s 263 for AYs 2012-13 & 2013-14 on the ground that these expenses were hit by regulation of MCI, Circular of CBDT and explanation to Section 37 and the assessment order was erroneous and prejudicial to the interest of the revenue owing to non-disallowance of the same by Ld. AO. But the said order could not succeed the test of judicial scrutiny and has already been quashed by the Tribunal vide its order dated 07/12/2018.

5.2 The Ld. Sr. Counsel also submitted that in terms of Section 20A and Sec. 33 of Indian Medical Council Act, 1956, MCI is empowered to issue regulation on professional conduct and etiquette to be observed by

Medical professionals only and its scope could not be extended beyond registered medical practitioner owing to inherent prohibition contained in Section 20A and Sec. 33(m) by which the Parliament has authorized MCI to frame regulations on conduct of medical practitioner only. This act nowhere attempts to regulate or govern the pharmaceutical companies. Therefore, CBDT circular No. 05/2012 could not enlarge the scope of MCI regulation by making it applicable to pharmaceutical companies without there being any enabling provision either under the Income Tax Act or under the India Medical Council Regulation, as observed by Tribunal in assessee's own case for AYs 2011-12 & 2012-13 as well as in the case of **DCIT V/s PHL Pharma Limited (ITA No. 4605/Mum/2014 order dated 12/01/2017).** In the above background, Ld. Sr. Counsel pleaded that the nature of expenditure was clearly not hit by explanation to Section 37(1) and therefore, the disallowance made by revenue was unjustified. On the other hand, Ld. DR supported the findings of Ld. CIT(A) in the impugned order.

5.3 Upon careful consideration, we find that this disallowance of medical conference expenditure has been made by Ld. AO on similar reasoning & logic as has been applied while disallowing expenditure on sales promotional articles. This disallowance has been made for the first time in this year which is evident from assessment orders for AY 2008-09 to 2013-14, as placed on record. In other words, the genuineness of the expenditure was never under doubt either in earlier assessment years or in the year under consideration. The reasoning applied by lower authorities to disallow the same stem from same reasoning & logic as applied to disallow expenditure on sales promotional articles. This being

the case, our adjudication as well as reliance on orders of Tribunal in assessee's own case for earlier years as well as reliance on the decision of this Tribunal in **DCIT V/s PHL Pharma Limited (supra)** (which has been co-authored by one of us) would equally apply to this issue also. Therefore, convinced with various arguments raised by Ld. Sr. Counsel as enumerated by us in preceding paragraphs and respectfully following the earlier decisions of Tribunal, we direct for deletion of disallowance of medical conference expenditure as sustained by learned first appellate authority. Resultantly, the grounds raised by the assessee stands allowed.

6. Finally, the appeal of the revenue stand dismissed whereas the appeal of the assessee stands allowed in terms of our above order.

Order pronounced in the open court on 15th January, 2020.

Sd/-	**Sd/-**
(Mahavir Singh)	**(Manoj Kumar Aggarwal)**
न्यायिक सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 15/01/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**