

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.993/M/2019
Assessment Year: 2014-15**

M/s. Raman & Weil P. Ltd., 36-37, Mittal Chambers Opp. Inox Theatre, Nariman Point, Mumbai – 400 020 PAN: AAACR5065M	Vs.	DCIT -1(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Vijay Jaiswal, D.R.

Date of Hearing : 20.10.2020
Date of Pronouncement : 27.10.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 26.11.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The issue raised in first ground of appeal is against the confirmation of disallowance of sales promotion expenses being gifts to doctors and hospitals amounting to Rs.10,76,256/-.

3. The facts in brief are that the assessee filed the return of income on 07.11.2014 declaring a total income of Rs.6,74,68,500/- which was processed under section 143(1) of

the Act. Thereafter the case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. It is pertinent to state that assessee is engaged in the business of manufacturing of pharmaceuticals and sales thereof. During the course of assessment proceedings, the AO noticed that assessee has debited sales promotion expenses in the profit & loss account which included Rs.10,76,256/- on account of free samples and gifts to doctors and hospitals etc. Accordingly, a show cause notice was issued to the assessee as to why these expenses should not be disallowed in view of the circular No.5/2012 dated 01.08.2012 issued by CBDT which provides that expenses incurred for the purpose of giving gifts, travelling facilities, hospitality and such other freebies to the doctors, medical practitioners and their professional associations are not admissible under section 37 of the Act in consonance with regulations issued by Medical Council of India under Medical Council Act 1956. The assessee replied to the show cause notice issued by the AO vide written submission dated 29.11.2016 submitting therein that these expenses are incurred in the ordinary course of business wholly and exclusively for the purpose of business and are allowable under section 37 of the Act. However, the reply of the assessee did not find favour AO and he added the said amount to the income of the assessee by framing assessment under section 143(3) of the Act order dated 05.12.2016.

4. In the appellate proceedings the Ld. CIT(A) dismissed the appeal by holding that AO has rightly disallowed the said expenses relying on the CBDT circular No.5/2012 dated

01.08.2012 which clearly provided for not allowing the said expenses as these expenses are in violation of regulations issued by Medical Council of India which is a regularity body constituted under Medical Council Act, 1956 and thus dismissed the ground raised by the assessee.

5. After hearing the Ld. D.R. and perusing the material on record, we note that the assessee is engaged in the business of manufacturing of pharmaceutical items and sales thereof. Since the assessee is in the business of pharmaceuticals, it is customary in the business of the assessee to incur sales promotion expenses on providing gifts, free samples to doctors, hospitals, medical association for arranging conferences and workshops for demonstrative purposes and also gifts given to customers, distributors, doctors and hospital staff and therefore in our opinion these expenses are clearly covered under the provision of section 37(1) of the Act as wholly and exclusively incurred for the purpose of business. The case of the assessee is squarely covered by the decisions of the co-ordinate bench of the Tribunal in the case of DCIT vs. PHL Pharma (P). Ltd. (2017) 78 taxmann.com 36 (Mum- Trib.) and Medley Pharmaceuticals Ltd. vs. DCIT 10(2)(2) (2020) 118 taxmann.com 44 (Mum-Trib.). We find that in these decisions the identical issue has been decided in favour of the assessee by holding that the MCA regulations are applicable to the doctors and not to the pharmaceutical companies who incur such expenses and therefore these expenses are purely business nature and had to be allowed as wholly and exclusively incurred for the purpose of business under section 37(1) of the Act. We are, therefore,

inclined to set aside the order of Ld. CIT(A) on this issue and direct the AO to allow the expenses. The ground no. 1 is allowed and AO is directed accordingly.

6. The issue raised in 2nd ground of appeal is against the confirmation of disallowance of interest expenses of Rs.22,160/- under section 36(1)(iii) of the Act.

7. The facts in brief are that the assessee has invested in the purchase of flat a sum of Rs.47,25,000/- bought from Dharmadev Infrastructure Ltd. According to the AO the investment made in the flat attracts disallowance under section 36(1)(iii) of the Act as the interest bearing funds were diverted to purchase the flat. The assessee replied before the AO that assessee has huge interest free funds available with it and purchase was made out of own funds and not out of borrowed funds. However, the AO computed the disallowance at Rs.22,160/- in para 6.4 and added the same to the income of the assessee.

8. In the appellate proceedings, the Ld. CIT(A) affirmed the order of AO on this issue without giving any clear cut finding on this issue.

9. After hearing the Ld. D.R. and perusing the material on record, we find that the assessee's own funds as on 31.03.2014 were Rs.3,485.91 lakhs whereas the total investments including the flat was to the tune of Rs.901.40 lakhs. Thus we find merit in the contentions of the assessee that where the assessee's own funds are more than the borrowed funds then inference has to

be drawn that investment made by the assessee in the flat was out of own funds and not out of borrowed funds. The case of the assessee is squarely covered by the decision of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. 49 Taxmann.com 335 (Bom.) wherein it has been held that where interest free funds available with the assessee are more than the non business investments made by the assessee then a presumption is that assessee has used own funds in the investments and not the borrowed funds. Accordingly, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.10.2020.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.10.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.