

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No.331/Del/2017
(Assessment Year: 2012-13)

Loesche India Pvt. Ltd., M-38/1, International Business Centre, Middle Circle, Connaught Place, New Delhi - 110 049. PAN: AAACLO980H	Vs.	ACIT, Circle : 15 (2), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri D. Subramanian, C.A.;
Revenue by:	Ms. Ashima Paul, [CIT]-DR;
Date of Hearing	28/01/2021
Date of pronouncement	28/01/2021

ORDER

PER PRASHANT MAHARISHI, A. M. :

1. This appeal is filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeals)-5, New Delhi, dated 24.10.2016 for Assessment Year 2012-13.
2. The assessee has only one substantive ground of appeal where the disallowance of Rs. 12,44,970/- made by the Assessing Officer in relation to medical insurance premium paid for the family members of the employees of the company on the ground that such expenditure though incurred in terms of contractual obligation with the employees, However, it cannot be stated to have been incurred wholly and exclusively for the purpose of the business of the assessee, was confirmed by the ld CIT (A). Therefore assessee is in appeal.
3. The assessee submitted written representation stating that above issue is squarely covered in favour of the assessee by the order of the co-ordinate bench in assessee's own case for Assessment Year 2010-11 wherein the

identical claim of the assessee was allowed. Further for Assessment Year 2013-14 the Id. CIT (Appeals) himself following the order of the co-ordinate bench for Assessment Year 2010-11 allowed the claim of the assessee in identical circumstances. Thus, the issue is squarely covered in favour of the assessee.

4. The Id. SR DR sought an adjournment. In view of the above facts that the above issue is squarely covered in favour of the assessee, the Id. [CIT] – DR submitted that issue may be taken up for hearing. She relied on the order of the Id. Assessing Officer.
5. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee is a company engaged in the business of Design & Engineering, Manufacturing & Trading of Vertical Roller Grinding Mill Systems of Cement Plants. It filed its return of income on 29.11.2012 declaring total income of Rs.15,40,65,920/-. The Id. Assessing Officer passed the assessment order under Section 143(3) of the Income Tax Act, 1961 (the Act) on 10.12.2015 determining total income of the assessee at Rs.15,69,71,330/-. He disallowed the medical insurance premium paid with respect to the family members of the assessee amounting to Rs.12,44,970/- which is in dispute before us. The Id. CIT (Appeals) also confirmed the above disallowance. However, on perusal of the order of the co-ordinate bench in assessee's own case for Assessment Year 2010-11 in ITA. No. 295 (Del) of 2016 dated 13.08.2018 the above disallowance was deleted as para No. 6 of the order as under:-

“ 6. After hearing, the submissions of both the parties and going through the material available on record, we find considerable substance in the contention of the assessee. The record reveals that the assessee had paid the insurance premiums of the employees' family members in terms of employment Rules framed by the assessee-company there for. Therefore, it can hardly be said that the impugned expenditure were not incurred wholly and exclusively for the purpose of business, which is the real intent of Section 37(1) of the IT Act. The Id. Authorities below could not bring any evidence on record to substantiate that tin. payments so made by the assessee-company had no nexus with the business of the assessee. Even otherwise, it is not necessary that all the payments/expenditure incurred by the assessee should have direct bearing on earning of income, but some payments are also made under certain business expediency. In the instant case, the payments claimed to have been made by the assessee for the insurance premium of such members who have attained the age of 21 years or more or who are the remote relations of assessee have already been offered by the assessee to tax before the Id. CIT (A), as also noted in the written submissions above. The

Id. Authorities below appear to have rejected the claim of the assessee that these payments were in the nature of perquisites to the employees as contemplated under sub-clause (iv) of section 17(2) of the IT Act, according to which any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee, shall be included in perquisites. However, in view of proviso (iii) & (iv) appended to this section clearly prohibit the applicability of section 17(2) in certain eventualities as contained in these provisions. In view of attending facts and circumstances of the case and the provisions of law pointed above, we do not find any justification in the findings reached by the Id. Authorities below for rejecting the deduction of impugned expenditure claimed by the assessee. Therefore, in view of various decisions relied by the assessee and in the totality of facts and circumstances of the case, we do not find any justification to discard the impugned claim of assessee made u/s. 37(1) of the IT Act. Accordingly, the appeal of the assessee deserves to be allowed. ”

6. The Id. CIT (Appeals) also in the case of the assessee for Assessment Year 2013-14 deleted the above disallowance following the order of the co-ordinate bench for Assessment Year 2010-11. In view of this, we find that the issue is squarely covered in favour of the assessee by the order of the co-ordinate bench. Accordingly, respectfully following the decision of the co-ordinate bench, we direct the Id. Assessing Officer to delete the disallowance of Rs. 12,44,970/-in relation to medical insurance premium of the family members of the employees. Accordingly, Ground No. 2 is allowed.
7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28/01/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 28/01/2021.

MEHTA

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	28.01.2021
Date on which the typed draft is placed before the dictating member	28.01.2021
Date on which the typed draft is placed before the other member	28.01.2021
Date on which the approved draft comes to the Sr. PS/ PS	28.01.2021
Date on which the fair order is placed before the dictating member for pronouncement	28.01.2021
Date on which the fair order comes back to the Sr. PS/ PS	28.01.2021
Date on which the final order is uploaded on the website of ITAT	28.01.2021
date on which the file goes to the Bench Clerk	28.01.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	