

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1922/Mum/2019

(A.Y: 2011-12)

ACIT, Circle – 2(1)(1) R.No. 561, 5 th Floor, Aayakar Bhavan, MK Marg, Mumbai- 400020.	Vs.	Solvay Pharma India Ltd, 3-4, Corporate Park, Sion Trombay Road, Mumbai – 400071.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD0322J		
Appellant	..	Respondent

Appellant by :	Shri Bharat Kumar Gupta, DR
Respondent by :	Shri Madhur Agarwal, AR

Date of Hearing	22.03.2021
Date of Pronouncement	24.03.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of the Commissioner of Income Tax (Appeals) - 04 Mumbai, passed u/s. 143(3) r.w.s 263 and 250 of the Income Tax Act, 1961. The revenue has raised the following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of publicity and propaganda expenses of Rs. 12,94,58,756/- relying on the ITAT decision which quashed the 263 proceedings, holding that MCI regulations 2002 is not

applicable on pharmaceutical companies and as such no prohibition by law within the meaning of explanation 1 to section 37(1) of the Act on claiming the expense by assessee as deduction u/s. 37(1) without appreciating the fact that providing freebies by pharmaceutical companies is as a natural corollary violation of the provisions of MCI Regulations.

2. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the AO be restored.

2. The Brief facts of the case are that, the assessee company is in the business of manufacturing and trading in pharmacies foundations and filed the return of income on 29.11.2011 disclosing a total income of Rs. 67,83,08,102/-. And under provisions of section 115 JB of the Act, the Book profits are computed of Rs. 61,01,53,828/-. The assessment was completed u/s 143(3) of the Act determining total income of Rs. 67,96,26,670/- on 08.03.2015. Subsequently, the Pr.CIT has passed a revision order u/s 263 of the Act on 30.03.2015 with specific directions. The A.O. in compliance to the directions of the Pr.CIT, has issued notice u/s 142(1) of the Act on the assessee to produce the books of accounts and documents relating to expenditure debited on account of publicity & propaganda and advertisement expenses. The Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed.

The A.O. has called for the further details and whereas the invoices of expenses submitted by the assessee are not properly supported. Hence the A.O. has allowed the claim to the extent of availability of invoices and rejected the balance claim of expenses of Rs.12,94,58,756/-and assessed the total income of Rs. 80,90,85,420/- and passed the order u/s 143(3) r.w.s 263 of the Act dated 30-12-2016.

3. Aggrieved by the order, the assessee has filed an appeal with the Ld. CIT(A), the Ld. CIT(A) considered the grounds of appeal of the assessee, submissions and findings of the A.O. The CIT(A) found that the assessee company has filed the appeal against the revision order of the Pr.CIT u/s 263 of the Act dated 30.03.2016 before the Hon'ble Tribunal. Whereas the Hon'ble Tribunal has heard the appeal and observed that there is no merits in the order passed u/s 263 of the Act and allowed the assessee's appeal. Therefore, the Ld.CIT(A) considering the facts that the revision order u/s 263 of the Act for the same assessment year has been quashed and the present appeal filed by the assessee is a consequential order passed by the Assessing officer u/s 143(3) r.w.s 263 of the Act has observed that the order passed by the Assessing officer is not valid and allowed the assessee's

appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in quashing the Assessment order irrespective of the fact that the assessee company has not proved its claim. Contra, the Ld. AR supported the order of the Ld CIT(A) and relied on the Hon'ble Tribunal order.

5. We heard the rival submissions and perused the material on record. Prima-facie, the only issue which the Revenue has challenged that the Ld.CIT(A) erred in granting the relief considering the Hon'ble Tribunal decision of quashing the Pr.CIT order U/Sec 263 order of the Act. We find that the Ld.CIT(A) has dealt on the disputed issue and observed at page 4 para 7 & 8 of the order as under:

“7. During the course of appellate proceedings, it was pointed out by the appellant that assessment was framed by Ld. AO u/s 143(3) r.w.s 263 of the Act appellant further submitted that the assessee company filed an appeal before the Hon'ble ITAT against the order of CIT-2, Mumbai dated 30.03.2016 for A.Y 2011-12. While deciding the appeal of the assessee against the order u/s 263, the Hon'ble ITAT in ITA No. 3585/Mum/2016 held as under:

24. We observe that the CBDT Circular dated 1-8-2012 (*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 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.

25. In view of the above discussion, we do not find any merit in the order passed u/s.263.

Since the assessment was framed in view of the order passed by Ld. CIT-2, Mumbai U/s 263 and order u/s 263 has been quashed by Hon'ble ITAT, therefore, assessment framed by Ld. AO u/s 143(3) r.w.s 263 is not a valid assessment. Hence, all the grounds raised by the Appellant are allowed.

8. In the result, the appeal is allowed.

6. The Ld. DR could not controvert the observations of the Ld.CIT(A) with any new cogent evidence or information, We find the Ld.CIT(A) has considered the submissions of the assessee and the decision of the Hon'ble Tribunal and passed a reasoned order. Accordingly, we are not inclined to interfere with the order of the Ld.CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 24.03.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 24.03.2021

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai