

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU (HON'BLE PRESIDENT)
AND
SHRI SAKTIJIT DEY (HON'BLE JUDICIAL MEMBER)

I.T.A. No.1637/Mum/2020 - Assessment year 2004-05
I.T.A. No.1638/Mum/2020 - Assessment year 2005-06
I.T.A. No.1639/Mum/2020 - Assessment year 2006-07

Procter & Gamble Health Limited (Formerly known as Merck Ltd) 8 th Floor, Godrej One, Priysha Nagar Eastern Express Highway, Vikhroli (E) Mumbai PAN : AAACE2616F	vs	The Asstt. Commissioner of Income- tax-7(1)(1), Mumbai
APPELLANT		RESPONDENT

Appellant by	Smt. Aarti Vissanji, AR
Respondent by	Shri Harendra Narayan Singh, DR

Date of hearing	18-11-2021
Date of pronouncement	16-12-2021

ORDER

Per Bench

Captioned appeals by the same assessee arise out of three separate orders, all dated 26-02-2020, of learned Commissioner of Income Tax (Appeals)-57, Mumbai for the assessment years, 2004-05, 2005-06 and 2006-07.

2. The registry has pointed out delay of 64 days in filing these appeals.

3. Having considered rival submissions, we are of the view that actually there is no delay as the limitation period was extended due to prevailing pandemic. Accordingly, we admit the appeals for adjudication on merits.

4. The only dispute arising in these appeals pertains to disallowance of expenditure incurred towards free samples.

5. Briefly the facts are, the assessee is a resident company engaged in the business of manufacturing, trading and marketing of basic vitamins, drugs, laboratory and fine chemicals, reagents, pharmaceutical specialties, diagnostics & pigments. In course of assessment proceedings for the impugned assessment years, the assessing officer noticed that the assessee had claimed deduction towards cost of free samples provided to doctors / medical practitioners / others. Being unsatisfied with the evidence furnished by the assessee, the assessing officer disallowed the cost incurred towards free samples in all the assessment years under consideration. Contesting the disallowances, assessee preferred appeals before the first appellate authority and thereafter before the Tribunal. Vide order dated 21-08-2013, the Tribunal restored the issue to the assessing officer for fresh adjudication. In the fresh assessment proceedings, the assessing officer again called upon the assessee to furnish the details of free samples and justify the claim of deduction. In reply to the query raised, though, the assessee furnished necessary details; however, the assessing officer was not fully satisfied. Ultimately, he disallowed 50% of the total cost of free samples in all the assessment years under dispute. Against the disallowance so made, assessee preferred appeals before learned first appellate authority. Relying upon the decision of learned Dispute Resolution Panel (DRP) in assessee's own case in assessment year 2013-14, learned first appellate authority restricted the

disallowance to 20% of the total cost of free samples distributed in all the assessment years.

6. Smt. Aarti Vissanji, learned counsel appearing for the assessee submitted, it is a regular business practice of all drug manufacturers to provide free samples to doctors / medical practitioners / others to promote their business activity. She submitted, the assessee has appointed marketing representatives, who travel to different places and physically meet the doctors / medical practitioners to distribute the free samples. She submitted, in course of assessment proceedings the assessee has furnished the required details of the free samples distributed as well as the doctors / medical practitioners to whom such samples were distributed. In this context, she drew our attention to various documents placed in the paper book. Further, she submitted, the cost incurred by the assessee towards free samples works out to a negligible percentage of the total turnover and not in excess of similar expenditure incurred in previous and subsequent assessment years. Thus, she submitted, there is no justifiable reason to disallow even 20% of the expenditure. She further submitted, in case of *Johnsons & Johnsons (2014) 150 ITD 377 (Mum)* while considering identical nature of dispute, the Tribunal has restricted the disallowance to 2% of the claim of the assessee. Thus, she submitted, in worst case, the disallowance should not exceed 2% of the cost incurred by the assessee towards free samples.

7. The learned departmental representative strongly relied upon the observations of the first appellate authority.

8. We have considered rival submissions and perused materials on record. Undisputedly, the assessing officer had disallowed 50% of the total cost incurred by the assessee towards free samples in the relevant assessment years. Whereas,

simply relying upon the decision of the learned DRP in assessment year 2013-14, learned Commissioner (Appeals) has restricted the disallowance to 20% of the cost incurred. Admittedly, against the aforesaid decision of learned Commissioner (Appeals), the revenue has not preferred any appeal. Be that as it may, the respective orders of learned departmental authorities clearly indicate that the disallowance was made purely on estimate basis. The assessing officer has accepted the fact that the assessee had produced before him the details with regard to names of the doctors and their addresses. He has disallowed 50% out of the expenditure saying that in some instances names and address are incomplete. However, the assessing officer has not referred to any such specific instance. On the contrary, on perusal of documents furnished in the paper book, we have noticed that the assessee had furnished the details of free samples along with their quantity and cost. Further, the assessee has also furnished the details of chemists' shop to which samples have been given. Additionally, the assessee has furnished the list of doctors / medical practitioners with their qualification, the field of practice, detailed address with PIN code.

9. It is a fact that the assessee personally does not go and distribute free samples to doctors / medical practitioners. Rather, the assessee has appointed a number of marketing representatives to physically visit doctors / medical practitioners to distribute the samples. Therefore, even accepting that the complete address of medical practitioners are not available in few instances, that by itself cannot be a reason to make the disallowance when the departmental authorities have accepted that distribution of free samples is a regular business practice and in fact, have not raised any doubt regarding the genuineness of the expenditure. Thus, when the assessee has furnished the required details relating

to the expenditure claimed, there is no justifiable reason to disallow even a part of it.

10. Further, It is relevant to observe, the cost incurred by the assessee towards free samples distributed as a percentage of the total turnover in different assessment years under dispute are as under:-

2004-05	0.86%
2005-06	1.76%
2006-07	1.21%

11. On a perusal of material placed before us, it is noticed that the cost incurred by the assessee towards distribution of free samples in these assessment years is much lesser than similar expenditure incurred in the earlier and subsequent assessment years. Thus, keeping in view the peculiar circumstances of the case, we hold that no disallowance out of the cost incurred towards free physician's samples is called for in any of these assessment years. Accordingly, we delete the additions. Ground 1 in all the appeals is allowed.

12. Ground 2 being premature at this stage, is dismissed.

13. Grounds 3, 4 and 5 being general grounds, are dismissed.

14. In the result, appeals are allowed, as indicated above.

Order pronounced on 16/12/2021.

Sd/-

Sd/-

(G.S. PANNU)	(SAKTIJIT DEY)
PRESIDENT	JUDICIAL MEMBER

Mumbai, Dt : 16/12/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai