

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 452/Del/2017 : Asstt. Year : 2010-11

Wipro GE Healthcare Pvt. Ltd., 4, Kadugodi Industrial Area, Bangalore, Karnataka-560067	Vs	DCIT, Circle-12(1), [Now Circle-10(1)] New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECA4311P		

Assessee by : Sh. Manoneet Dalal, CA

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 28.10.2021	Date of Pronouncement: 28.01.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-33, New Delhi dated 23.10.2016.

2. Following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case and in law, the Id. CIT(A) erred in upholding part addition of Rs.19,99,626/- out of Rs.65,29,629/- on account of expenses incurred towards CME program organized by various medical associations, hospitals sponsorship of medical books for library purpose, etc. to create awareness about health diseases and treating the same as inadmissible under section 37(1) of the Act.

2. that on the facts and circumstances of the case and in law, the Id. CIT(A) erred in upholding the addition of Rs.1,18,440/- on account of interest on delay in payment of service tax under section 37(1) of the Act."

3. The assessee filed return of income on 08.10.2010 declaring an income of Rs.4,92,63,279/-. The assessee company is engaged in Trading of diagnostic products and imaging agents including contrast media products and nuclear medicine cold kits.

Disallowance of CME & Free goods expenses:

4. During the assessment proceedings, the details of participation fee towards Continuous Medical Education program (CME) were given by the assessee. On examination of these details, the Assessing Officer noticed that the most of the expenses pertain to gifts, hospitality, cash or monetary grants by the assessee company to the medical Practitioners or other professionals.

5. The assessee company has debited participation fee towards CME during the financial year 2009-10 amounting to Rs.65,29,629/-. From the details of the ledger of these expenses filed by the assessee company on 20.12.2013, the AO noticed that the assessee has paid sponsorship fee to various persons, organization/institutions etc. under the head of participation fee towards CME. Details of such expenses as per ledger & sample vouchers given by the assessee company noted by the AO and tabulated.

6. The AO noted that the Medical Council of India's (MCI) has amended Indian medical council (Professional conduct; etiquette and Ethics) Regulations, 2002 (The Regulations) issued on 10.12.2009 wherein the MCI has imposed prohibition on medical practitioners from *inter alia*, accepting gifts, travel facilities, hospitality, cash or monetary grants from pharmaceutical and allied health care sector industry.

7. The Assessing Officer has also held that following CBDT circular No. 05/2012 dated 17.09.2012 wherein it has been advised that the expenditure incurred by way of provision of such freebies (as prohibited by the MCI) by the pharmaceutical and allied health care industry are in violation of the provisions of the Regulations and such are inadmissible under section 37(1) of the Act being an expenditure prohibited by the law.

8. Relying on the circular of the CBDT and the MCI guidelines, the AO has disallowed an amount of Rs.84,30,855/-.

9. Aggrieved the assessee filed appeal before the Id. CIT(A) who has examined the nature of expenditure relating to CME and held that while some expenditure is in the nature of the sponsorship of events, there are certain others which relate to provisions of books for Government as well as private hospitals and there are still others which are in the nature of sponsorship of doctors by way of providing them travel/ lodging etc. After due consideration and discussions, the addition related to the expenses pertaining to sponsorship of events and provision of books for the Government hospitals are allowed and those for provision of books to private hospitals and sponsorship of individual doctors were confirmed.

10. Thus, the Id. CIT(A) confirmed the addition to the tune of Rs.19,66,600/- out of the total disallowance of Rs.84,30,800/- made by the AO.

11. Heard the arguments of both the parties and perused the material available on record.

12. We have considered the reasoning of the AO as well as that of the Id. CIT(A), submissions of the assessee, the

Regulations of MCI and also the Circular of the CBDT. We have noted that the MCI Regulations and the CBDT Circular were not applicable for the relevant year. Hence, the assessee gets remission for the instant Assessment Year. Appeal of the assessee on this ground is allowed.

13. Ground no. 4 relates to disallowance of Rs.1,18,440/- on account of interest on delayed payment of service tax.

14. In the assessment order the A.O. has recorded as under:

"The assessee company has claimed, Rs.1,24,440/- on account of interest on delay.

Description	Amount (INR)	Date of Deposit	Remarks
<i>Being interest on service tax deposited for FY 2008-09</i>	88,371.00	13.05.2009	<i>Refer Annexure SA for challan payment</i>
<i>Being interest on service tax deposited for FY 2008-09</i>	1,201.00	12.05.2009	<i>Refer Annexure SB for challan payment</i>
<i>Being penalty paid for the late filling of service tax return for IInd half of FY 2008-09</i>	2,000.00	11.06.2009	<i>The amount of Rs.6,000 is offered to tax in the tax</i>
<i>Being penalty paid for the late filling of service tax return for IInd half of FY2008-09</i>	4,000.00	11.06.2009	<i>computation</i>
<i>Being ST liability with interest booked as per the ST audit conducted by Dept, for FY 2005-10</i>	28,868.00	31.03,2010	

The assessee company was required to show cause as to why the expenses of Rs.1,24,440/- be not disallowed. In compliance thereto the assessee filed written reply as under:

I wish to submit that the aforesaid expense was incurred towards interest on delay in deposit of service tax dues/return. The expense being compensatory in nature is eligible for deduction under section 37(1) of the Income tax act."

I have considered all the facts of the case, plea of the assessee, and also expenses incurred assessee, and also expenses incurred as noted above and of the view that the assessee company has not complied with the provisions of law and also submitted wrong statement of sales tax returns. As evident from the details of expenses, therefore the company has to pay extra amount of interest and tax on the basis of audit objections from A.Y. 2005-06. The payment made for not complying the provisions of law cannot be treated as compensatory payments because the amount in question has been charged to penalize the assessee so that in the future the assessee can comply the provisions of law well in time and also filed its statement true and correct. The expenses incurred on account of not complying the provisions of law well in time is clearly penal in nature. Therefore, the amount of Rs.1,18,440/- (Rs.6000/-) already added by the assessee is hereby disallowed and added back to the total income of the assessee."

15. The Id. CIT(A) confirmed the disallowance holding that the Service Tax is not a levy on the taxpayer. It was held that the assessee collected service tax from the recipient of the service. The situation is akin to interest on late payment of TDS. The TDS is collected by the deductor from the recipient of an amount. Once deducted this amount which actually belongs to the Govt., is now with the deductor. In fact, the deductor is an agent of Govt., for collection of money due to the Govt. & a custodian of the same till it is deposited. Delayed payment of TDS to the Government in effect tantamounts to the deductor utilizing the amount which actually belongs to the crown and has already been collected/deducted from someone else. Similarly, the service tax is collected by the service provider

from the recipient of the service at the time of receiving the payment for the service.

16. The service tax also belongs to the crown and has already been collected from someone else. Like TDS, Service tax is also not a tax liability of the deductor who only collects & remits it to the Govt. This uncanny similarity between the TDS and the Service Tax implies that the treatment of the interest paid on delayed payment of either should be similarly treated.

17. The Id. CIT(A) thus held that similar to the interest paid on delayed payment of TDS, the interest paid on delayed payment of Service Tax also cannot be treated for the purpose of business.

18. We find that the observation of the Id. CIT(A) is on a misplaced interpretation of the provisions of the Act. It is well settled principle that interest on late payment of Service Tax is not penal in nature. Since, it is compensatory in nature, it is eligible for deduction u/s 37(1) of the Act as it can be termed to be expended wholly and exclusively for the business purpose and the payment of interest on late remittance of Service Tax is neither an offence nor prohibited by law. In the result, the appeal of the assessee on this ground is allowed.

19. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 28/01/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 28/01/2022

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member