

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT

**ITA No. 2309/Ahd/2018
Assessment Year : 2015-16**

Amay Pharmaceuticals Pvt. Ltd., C-406, Ganesh Meridian, Near Sola Over Bridge, S.G. Highway, Ahmedabad-380060 PAN : AAJCA 7372 D	Vs	Dy. Commissioner of Income-tax, Circle 1(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri S.N. Divatia, AR
Revenue by :		Smt. Neeju Gupta, Sr DR

सुनवाई की तारीख/Date of Hearing : 24/05/2022
घोषणा की तारीख /Date of Pronouncement: 26/05/2022

आदेश / ORDER

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax (Appeals)-1, Ahmedabad ("CIT(A)" in short) dated 21.08.2018 and the grounds raised by the assessee therein read as under:-

(1) *The Hon. CIT(A) has erred in not considering the set off of c/f loss amounting to Rs. 6,02,74,320 to the extent for the adjustment of total income determined by him.*

The appellant submits that the c/f loss is determined in the previous assessment made u/s 143(30) of the IT Act.

(2) *The Ld. AO has grievously erred in law and / or on facts in confirming the addition made by the Ld. AO of Rs.34,20,163 being the expenditure incurred for gifts and freebees paid to the doctors which is not legal.*

The appellant submits that the above expenditures are incurred by the appellant for the promotion of business activity

(3) *The Hon'ble CIT (A) was also erred for not accepting the appellant's request for the capitalization of expenses of Rs.34,20,163 incurred for the purpose of creation of company's Brand Name and Trade Mark only to ensure the profit in the long term.*

2. I have heard the arguments of both the sides and also perused the relevant material available on record. As regards the common issue raised

in Ground Nos. 2 & 3 of the assessee's appeal relating to the addition of Rs.34,20,163/- made by the Assessing Officer and confirmed by the learned CIT(A) by way of disallowance of expenditure incurred by the assessee for giving gifts and freebies to the doctors, the learned Departmental Representative has submitted that this issue is squarely covered in favour of the Revenue and against the assessee by the latest decision of Hon'ble Supreme Court in the case of Apex Laboratories (P.) Ltd. Vs. DCIT, reported in [2022] 442 ITR 1 (SC), wherein it is held that since acceptance of freebies by medical practitioners is punishable by MCI, distribution of such freebies would fall within purview of prohibited by law and therefore, expenditure incurred by assessee-pharmaceutical company in distribution of such freebies would not be granted as deduction in terms of *Explanation 1* to Section 37(1) of the Act. Although the learned Counsel for the assessee has made an attempt to challenge the applicability of the said decision to the facts of the present case by submitting that the gifts and freebies, in the present case, were not given to the doctors specifically for promoting its products by prescribing the same, I am unable to accept this contention of the learned Counsel for the assessee. In my opinion, when the acceptance of gifts and freebies by the doctors itself was prohibited by law, the expenditure incurred by the assessee-pharmaceutical company in distribution of such gifts and freebies to the doctors is clearly hit by *Explanation 1* to Section 37(1) of the Act as held by the Hon'ble Supreme Court in the case of Apex Laboratories (P.) Ltd. (supra) and the assessee-company, therefore, is not entitled for deduction on account of expenditure incurred on distribution of freebies and gifts to the doctors as rightly held by the authorities below. I, therefore, uphold the impugned order of the learned CIT(A) confirming the disallowance made by the Assessing Officer on this issue and dismiss Ground Nos. 2 & 3 of the assessee's appeal.

3. As regards the issue raised in Ground No.1 relating to the claim of the assessee for set off of carried forward loss against the income for the year under consideration, the learned Counsel for the assessee has submitted that since neither the Assessing Officer nor the learned CIT(A) has given any specific finding on this issue, the same may be restored to the file of the Assessing Officer to decide the same after necessary verification. Since the learned DR has also not raised any objection for the same, I restore this issue to the file of the Assessing Officer to consider and decide the same after verifying the claim of the assessee from the relevant records. Ground No.1 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

4. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on 26th May, 2022 at Ahmedabad.

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 26/05/2022

SR

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

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

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad