

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1044/Mum/2022
(Assessment Year :2016-17)**

&

**ITA No.1045/Mum/2022
(Assessment Year :2017-18)**

M/s. Manipal Cigna Health Insurance Company Limited 401/402, 4 th Floor Raheja Titanium Western Express	Vs.	Principal Commissioner of Income Tax, Mumbai-1 330, 3 rd Floor Aayakar Bhavan Maharishi Karve Road Mumbai – 400 020
PAN/GIR No.AAEECC7904J		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal
Revenue by	Shri Manoj Kumar
Date of Hearing	01/08/2022
Date of Pronouncement	11/08/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.1044/Mum/2022 & 1045/Mum/2022 for A.Y.2016-17 & 2018-19 preferred by the order against the revision order of the Id. Pr.Commissioner of Income Tax-Mumbai-1, u/s.263 of the Act dated 27/03/2022 for the A.Y. 2016-17 & 2018-19.

Identical issues are involved in both these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The only effective issue to be decided in this appeal is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstance of the instant case.

3. We have heard rival submissions and perused the materials available on record. The assessee is engaged in the business of health insurance. The return of income for the A.Y.2016-17 was filed by the assessee on 03/11/2016 declaring total loss of Rs.171,37,13,328/-. During the course of assessment proceedings, various details were called for by the Id. AO from time to time and the same were duly furnished by the assessee.

3.1. The Id. AO also referred the matter to Id. Transfer Pricing Officer u/s.92CA (1) after obtaining necessary approval from PCIT (1), Mumbai for benchmarking for determination of arm's length price of international transactions carried out by the assessee. The Id. TPO passed an order u/s.92CA(1) of the Act dated 13/09/2019 by making 'Nil' adjustment.

3.2. The Id. AO on being satisfied with the replies furnished by the assessee framed the assessment u/s.143(3) of the Act on 18/12/2019 accepting the returned loss of the assessee.

3.3. This assessment was sought to be revised by the Id. PCIT by invoking revision jurisdiction u/s.263 of the Act. The Id. PCIT in the first show-cause notice issued to the assessee observed that on perusal of the

profit and loss account for A.Y.2016-17, it was seen that the assessee company had debited an amount of Rs.16,45,16,738/- under the head 'Information Technology related expenses and Rs.10,91,91,824/- under the head 'equipment software and amenities'. In the opinion of the Id. PCIT, these expenses are enduring in nature and would give enduring benefit to the assessee and consequentially have to be treated as capital expenditure. In the opinion of the Id. PCIT, the said expenses were allowed by the Id. AO without making any enquiries. Accordingly, the Id. PCIT treated the order passed by the Id. AO as erroneous in as much as it is prejudicial to the interest of the Revenue and passed revision order u/s.263 of the Act setting aside the order of the Id. AO.

3.4. We find from the perusal of the factual paper book filed comprising of pages 1 to 325, the Id. AO had raised a specific query vide notice u/s.142(1) of the Act dated 18/11/2019 during the course of assessment proceedings more specifically with regard to information technology related expenses and equipments software and amenities charges. The said notice u/s.142(1) of the Act contains an annexure which contains the details to be furnished by the assessee in a specific format. The said notice also show-caused the assessee as to why the said expenditure should not be treated as 'capital' in nature. Notice u/s.142(1) of the Act dated 18/11/2019 together with annexure given by the Id. AO to the assessee during the course of assessment proceedings are enclosed in pages 127-129 of the factual paper book. The assessee in response to the said notice furnished the reply vide letter dated 10/12/2019 which are reproduced hereunder:-



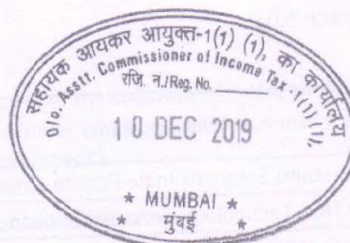
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10 December 2019

Deputy Commissioner of Income-tax - 1(1)(1)
Room No 533, 5th Floor,
Aayakar Bhavan,
M K Road,
Mumbai 400 020



Dear Sir,

Re: ManipalCigna Health Insurance Company Limited (ManipalCigna)
Permanent Account Number (PAN): AAEEC7904J
Assessment Year (AY): 2016-17
Notice issued under section 142(1) of the Income-tax Act, 1961 (Act)

We refer to the notice dated 18 November 2019 issued under section 142(1) of the Act (copy enclosed as Annexure 1), to our client, ManipalCigna, requesting for certain information/details with respect to the return of income filed for AY 2016-17 and our submissions dated 31 July 2017, 16 March 2018, 31 August 2018, 10 October 2019, 17 October 2019 and 22 November 2019.

In this connection, under the instruction of and for and on behalf of our client, ManipalCigna, we wish to submit as under:

1. Details regarding Information technology (IT) related expenses

- i. During the year ended 31 March 2016, ManipalCigna has debited an amount of Rs 16,45,16,738 pertaining to "Information Technology Related Expenses" to the profit and loss account which has been disclosed in the audited financial statements in Schedule 4 - Operating expenses. The vendor-wise break-up of the amount of Rs 16,45,16,738 has been provided below:

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Vendor Name	Amount in Rs	Related Party
Cigna Health Solutions India Private Limited	4,49,66,464	Yes
Cigna HLA Technology Services Company Limited	6,56,93,945	Yes
Cigna European Services (UK) Ltd.	3,38,90,204	Yes
NetMagic IT Services Private Limited	1,22,44,454	No
Team Computers Private Limited	4,62,526	No
Dimension Data India Private Limited	13,31,248	No
CS Infocom Pvt Ltd	1,08,644	No
NSE IT Limited	70,67,168	No
Reversal of expenses	-17,81,088	
Other Vendors	5,33,175	
Total	16,45,16,738	

ii. We wish to submit that ManipalCigna has withheld appropriate taxes on the aforesaid expenses. A copy of TDS returns of ManipalCigna in Form 24Q, 26Q and 27Q for all the quarters of AY 2016-17 has already been furnished as Annexure 2 vide our submission dated 17 October 2019.

iii. We understand that in line with the adjustment made by your predecessor for the AY 2014-15, you seek to treat the entire expenditure of Rs 16,45,16,738 as capital expenditure in the hands of ManipalCigna. In this connection, we wish to state as under:

IT related expenses paid to Cigna Health Solutions India Private Limited

iv. Out of the above, an amount of Rs 4,49,66,464 towards access charges and maintenance charges was paid to Cigna Health Solutions India Private Limited (CHSI) for the use and maintenance of various software in the ordinary course of business.

v. At the outset, we wish to submit that the addition made in the AY 2014-15 was pursuant to the Vendor Agreement between CHSI and ManipalCigna dated 22 November 2012 (copy of the agreement has been enclosed as Annexure 2). However, the services under the Vendor Agreement dated 22 November 2012 have been terminated on account of completion of the scope of work envisaged therein. The IT related expenses paid by ManipalCigna to CHSI during the AY 2016-17 are for:

- Rs 3,65,88,138 - Access to software for the purpose of carrying on the business of ManipalCigna - refer agreement dated 1 June 2014 enclosed as Annexure 3 (hereinafter referred to as 'Access Charges Agreement'); and

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Vivek Dangri
Membership No: 607198



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- Rs 83,78,326 - Maintenance charges in respect of the software provided by CHSI to ManipalCigna - refer agreement dated 1 December 2015 enclosed as Annexure 4 (hereinafter referred to as 'Maintenance Agreement').
- vi. On review of the said agreements, you would note the following:
- CHSI was the owner of the Intellectual Property being the software and has the exclusive rights over the software. During the year, ManipalCigna was only permitted to use the system and tools. ManipalCigna was not permitted to re-sell or re-distribute any of the system / tools without the consent of CHSI (refer paragraph 16 of the Access Charge Agreement);
 - In respect of the software licensed by CHSI to ManipalCigna, CHSI was required to maintain the same. For this purpose, CHSI had employed qualified employees on its payroll and had also appointed third party vendors, as required (refer Appendix 1 and 2 of the Maintenance Agreement);
 - The risk and rewards associated with the software were with CHSI;
 - The software cost was capitalized in the books of CHSI on which depreciation is claimed by CHSI;
 - CHSI has invoiced the access and maintenance charges for use of software by ManipalCigna levying service tax at the rate of 14.50%. Also, in respect of the payment made by ManipalCigna to CHSI towards Access charges and Maintenance charges, ManipalCigna had withheld taxes under section 194J of the Act at the rate of 10% (sample copy of invoices is enclosed as Annexure 5);
 - Additionally, it would be pertinent to note that during the year ended 31 March 2018, on 28 February 2019, ManipalCigna and CHSI have entered into a 'Settlement Agreement' (copy enclosed as Annexure 6) for transfer of various software from CHSI to ManipalCigna for a consideration of Rs 4,72,17,364, resulting into the termination of the Access Charge and Maintenance Agreements.
 - Subsequent to the said Settlement Agreement, the Intellectual property of the software was transferred from CHSI to ManipalCigna and the same was capitalized in the books of ManipalCigna for AY 2018-19.
- vii. Given the above, as payments by ManipalCigna to CHSI during the AY 2016-17 was towards Access charges for software (being Rs 3,65,88,138) and of Maintenance charges (being Rs 83,78,326), in absence of any benefits of an enduring nature, the amount paid by ManipalCigna under the Access Charge and Maintenance Charges Agreements have

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been claimed as revenue expenditure allowable as a deduction in the books of ManipalCigna.

IT related expenses paid to other vendors

- viii. Additionally, IT related expenses also consist of charges paid to other vendors for the use of various software or web-sites in the ordinary course of business of ManipalCigna. Sample copy of agreement with Cigna European Services (UK) Ltd. and sample of invoices for IT related expenses are enclosed as **Annexure 7** and **Annexure 8** respectively.
- ix. Given the above, we humbly wish to submit that the expenses incurred by ManipalCigna are revenue in nature and should be allowable as a deduction.

Deductibility of aforesaid expenses

- x. The IT related expenses should be considered as a revenue expenditure and allowed as a deduction in the return of income of ManipalCigna for AY 2016-17 for the reasons specified here under:
- Section 37(1) of the Act allows for deduction of business expenditure of a general nature subject to fulfilment of specified conditions.
 - The key conditions that are required to be fulfilled for allowability of an expenditure under section 37 of the Act is discussed as under:
 - expenditure not being expenditure of the nature described in sections 30 to 36 of the Act;
 - expenditure not being in the nature of personal expenditure;
 - expenditure not being in the nature of capital expenditure;
 - expenditure should be laid out or expended wholly and exclusively for the purposes of the business or profession.
 - The expenditure in the instant case is not of the nature discussed in sections 30 to 36 of the Act. Further, it is also not a personal expenditure and has been laid out or expended wholly and exclusively for the purposes of the business or profession of ManipalCigna.

We have discussed below the reasons why the aforesaid expenditure is not capital in nature (and qualifies as a revenue expenditure):

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Capital vs revenue expenditure

- The terms 'capital expenditure' and 'revenue expenditure' are not defined in the Act and accordingly, the meaning of the terms is to be construed based on the natural meaning of the term as well as judicial precedents in the matter.

The Supreme Court in the case of *CIT vs Ashok Leyland Ltd (86 ITR 549) [1972 SC]* held that the word "capital" (in capital expenditure) connotes permanency and capital expenditure is, therefore, closely akin to the concept of securing something, tangible or intangible property, or corporeal or incorporeal right, so that they could be of a lasting or enduring benefit to the enterprise in issue. Revenue expenditure, on the other hand, is operational in its perspective and solely intended for the furtherance of the enterprise.

- Further, based on the rulings in the case of *Empire Jute Co Ltd vs CIT (124 ITR 1) (SC)*, *Peerless Securities Ltd vs JCIT (277 ITR 57) (Calcutta Tribunal)*, *CIT vs Kusum Products Ltd (149 ITR 250) (Cal)*, the following broad principles emerge for determining the nature of expenditure:
 - In deciding whether a particular expenditure is capital or revenue in nature, it is pertinent to examine whether the expenditure in question was incurred to create any new asset or was incurred for maintaining the business of the company. If it is the former, it is capital expenditure; however in the latter case, the same would be in the nature of revenue expenditure - *Dalmia Jain & Co Ltd vs CIT (81 ITR 754) (SC)*
 - Whether the money paid is revenue or capital expenditure depends not so much upon the facts as to whether the amount paid is large or small or whether it has been paid in lump sum or by instalments, as it does upon the purpose for which the payment has been made and expenditure has been incurred. It is the real nature and quality of the payment and not the quantum or the manner of the payment which would prove decisive - *M K Bros (P) Ltd vs CIT (86 ITR 38) (SC)*, *Travancore Sugars & Chemicals Ltd vs CIT (62 ITR 566) (SC)*
 - If the outgoing is so related to the carrying on or the conduct of the business that it may be regarded as an integral part of the profit earning process or operation, and not for the acquisition of an asset of a permanent character, the possession of which is a condition precedent for the running of the business, then it would be expenditure of revenue nature.
- Further, in the case of *CIT vs Associated Cement Companies Ltd. (172 ITR 257) (SC)*, the Supreme Court has held as under relying on the judgement of *Empire Jute Co Ltd vs CIT (124 ITR 1) (SC)*:

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- there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the cost of enduring benefit may break down. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test.
 - If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.
- xi. Thus, it is submitted that the payment made by ManipalCigna for IT related expenses is not for acquisition of any asset but is of a nature that helps ManipalCigna for running the insurance business in India. Accordingly, based on the above discussion and various judicial precedents, the amount paid by ManipalCigna cannot be construed to be a capital expenditure but the same is revenue expenditure eligible for deduction under section 37(1) of the Act.
- xii. Without prejudice to the above, where your goodself wishes to treat the IT related expenses as capital expenditure and thus, disallow the same under section 37(1) of the Act, we request you to grant us depreciation under section 32 of the Act on the said capital expenditure.
2. **Details regarding Usage cost - Equipments, software and amenities related expenses (Usage cost)**
- i. During the year ended 31 March 2016, ManipalCigna has debited an amount of Rs 10,91,91,824 pertaining to "Equipments, Software and amenities - Usage Cost" to the profit and loss account which has been disclosed in the audited financial statements in Schedule 4 - Operating expenses. In this regard, we have tabulated the details of vendors as under:

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Vendor Name	Amount in Rs	Related Party
Connect Residuary Private Limited	8,86,31,022	No
Dell International Services India Private Limited	1,50,43,944	No
Sonata Information Technology Limited	16,12,726	No
SAS Institute India Private Limited	3,88,216	No
Dimension Data India Private Limited	7,88,640	No
LDS Infotech Pvt Ltd	1,23,483	No
NetMagic IT Services Private Limited	25,30,568	No
Other Vendors	73,225	
Total	10,91,91,824	

- ii. We wish to submit that ManipalCigna has withheld appropriate taxes on the aforesaid expenses. A copy of TDS returns of ManipalCigna in Form 24Q, 26Q and 27Q for all the quarters of AY 2016-17 has already been furnished as Annexure 2 vide our submission dated 17 October 2019.
- iii. We understand that in line with the adjustment made by your predecessor for the AY 2014-15, you also seek to treat the entire expenditure of Rs 10,91,91,824 as capital expenditure in the hands of ManipalCigna. In this connection, we wish to state as under:
- iv. As submitted in para 1(v) above, we wish to re-iterate that the addition made in the AY 2014-15 was pursuant to the Vendor Agreement between CHSI and ManipalCigna dated 22 November 2012 (copy of the agreement has been enclosed as Annexure 2). However, the services under the Vendor Agreement dated 22 November 2012 have been terminated on account of completion of the scope of work envisaged therein.
- v. The Usage cost consists of:
 - furniture and equipment lease charges paid to Connect Residuary Private Limited;
 - IT peripherals and other expenses incurred in the ordinary course of business.
- vi. Sample copy of agreement with Connect Residuary Private Limited is enclosed as Annexure 9.
- vii. Given the above and relying on the reasons for deductibility of expenses outlined in para 1(x), we humbly wish to submit that no asset is purchased by ManipalCigna which can be capitalised and accordingly, the Usage cost incurred by ManipalCigna should be considered as revenue expenditure allowable as a deduction.

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viii. Without prejudice to the above, where your goodself wishes to treat the Usage cost as capital expenditure and thus, disallow the same under section 37(1) of the Act, we request you to grant us depreciation under section 32 of the Act on the said capital expenditure.

We request you to take the above on record.

Should you have any questions, request you to let us know.

Yours faithfully,

For Ernst & Young LLP

Authorised Signatory

Enclosures: As Above

Copy to: ManipalCigna Health Insurance Company Limited

3.5. The aforesaid submissions made by the assessee before the Id. AO goes to prove that in response to specific query raised by the Id. AO, the assessee has furnished the detailed submissions furnishing the complete description and nature of services for which payments are made together with relevant supporting documents in the form of agreements etc., and had also furnished legal submission thereon as to why the said expenditure should be treated only as Revenue expenditure and not capital expenditure. This goes to prove that the Id. AO had made adequate and requisite enquiries during the course of assessment

proceedings and had correctly applied the provisions of the Act and had decided the issue by granting deduction as revenue expenditure in accordance with law. Hence, this is not a case of lack of enquiry or the Id. AO not carrying out requisite enquiries for enabling the Id. PCIT to invoke revisionary jurisdiction u/s.263 of the Act. In fact, the assessee in response to show-cause notice issued by the Id. PCIT had duly drawn attention of the Id. PCIT by furnishing the said replies before him also. The Id. PCIT had not bothered to even look into these submissions and proceeded to treat the order of the Id. AO as erroneous and prejudicial to the interest of the Revenue on the ground that no enquiries were carried out by the Id. AO. We have no hesitation to hold that order of the Id. PCIT is grossly erroneous in the instant case and the order of the Id. AO is not erroneous. Hence, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act for the A.Y.2016-17. Accordingly, the grounds raised by the assessee are allowed.

4. With regard to A.Y.2017-18, the issues are identical and specific enquiries were raised by the Id. AO for A.Y.2017-18 raised specific enquiry vide notice u/s.142(1) of the Act dated 18/11/2019 together with the Annexure exactly identical to that raised by him for A.Y.2016-17. The said notice together with the Annexure are enclosed in pages 137-139 of the factual paper book. The replies filed by the assessee before the Id. AO in response to the said specific query were made by the assessee vide letter dated 10/12/2019 which are enclosed in pages 129 to 136 of the factual paper book. Hence, the decision rendered for A.Y.2016-17 shall apply mutatis mutandis for A.Y.2017-18 also.

5. In the result, both the appeals of the assessee are allowed.

Order pronounced on 11/08/2022 by way of proper mentioning
in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/08/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai