आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.949/Hyd/2017 & 1722/Hyd/2016		
Assessment Years: 2006-07 & 2003-04		
Dr. Reddy's Laboratories Ltd, Hyderabad PAN:AAACD7999Q	Vs.	Asst./Dy. C.I.T. Circle 17(1) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri P.S.R.V.V. Surya Rao, CA	
Revenue by:	Shri Y.V.S.T. Sai, CIT (DR)	
Date of hearing:	08/08/2022	
Date of pronouncement:	17/08/2022	

ORDER

Per R.K. Panda, A.M

ITA No.1722/Hyd/2016 filed by the assessee is directed against the order dated 26.9.2016 of the learned CIT(A)-5, Hyderabad relating to A.Y 2003-04. ITA No.949/Hyd/2017 filed by the assessee is directed against the order dated 20.03.2017 of the learned CIT (A)-5 Hyderabad relating to A.Y 2006-07. Since common issues are involved in both these appeals, therefore, for the sake of convenience, both these appeals were heard together and are being disposed of by this common order.

ITA No.949/Hyd/2017 – A.Y 2006-07

2. This is the second round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee

Company filed its return of income on 29th November, 2006 declaring Nil income after claiming deduction under chapter VIA under the normal provisions and Rs. 204,62,90,909/- as book profit u/s I15JB of the Act. Subsequently, the assessee filed revised return on 29th October, 2007 declaring total income at Nil and the book profit at Rs.197,74,95,284/-. The return was selected for scrutiny and the Assessing Officer proposed a draft order u/s 144C dated 23rd December, 2009. The assessee filed objections u/s. 144C(2) before DRP on 29th ,January, 2010. The DRP, Hyderabad passed order u/s 144C(5) on 30th September, 2010 and Assessing Officer finalized the assessment order on 1st November, 2010. The assessee preferred appeal before the Tribunal against the order of the DRP and raised several grounds. The ITAT vide order dated 8.8.2013 in 1TA No. 1605/Hyd/10 confirmed certain additions, deleted some additions and also restored some issues to the file of the Assessing Officer for re-examination and re-consideration. Two additions made in the original order which were restored for fresh consideration are (i) Local Doctors Meet expenditure and (ii) Individual Doctors Services.

3. Subsequently, in the set aside proceeding, the Assessing Officer noted that the assessee claimed Rs.10,38,84,655/- as expenditure under the head “Local Doctors Meet”. From the details furnished by the assessee, he noted that the expenditure inter alia included items of expenditure which were incurred on doctors for provision of various benefits in their individual capacity. These include dinner expenses and gifts to doctors, dinner sponsorships, purchase of air tickets, travel expenses etc. The details of such expenditure were compiled by the Assessing Officer and the expenditure which is in the nature

of personal expenditure of individual doctors totaling to Rs 1,03,29,388/-, was disallowed.

4. So far as the individual doctors services are concerned, the Assessing Officer noted that the assessee claimed Rs 8,84,41,258/- as expenditure under the sub head "Individual Doctors Services". The details of the expenditure debited under the subhead individual doctor services were called for and examined by the AO. According to the Assessing Officer, the very subhead under which the expenditure is shown, it is clear that the entire expenditure incurred was for providing various services to individual doctors. The details, according to him show that the services cover the entire gamut from sponsoring a doctor's travel and stay to attend a conference organized by a third party, to expenditure on a doctor travelling to and fro from various parts of the country for which no details were given, to sponsoring a vacation of a doctor with his family and incurring expenditure on behalf of a doctor on his foreign travel. The gifts given also range from purchasing hospital equipment, stethoscopes, medical books and chairs, computer, and television sets to purely personal gifts like care music system, home appliances, hair dryers, Rayban glasses, air conditioner for doctor's residence, etc. The assessee could not provide plausible reason to justify the claim of such expenditure which is purely in the nature of the personal expenditure of various doctors. Therefore, , the AO held that such expenditure cannot be accepted as laid out wholly and exclusively for the purposes of its business.

5. The Assessing Officer held that the benefit derived by the assessee's business from provision of such services to various individual doctors is not spelt out. According to him, though the

assessee may be required to give gifts and compliments relating to products being dealt with by the company as a trade practice in this line of business, however, incurring of expenditure which is purely in the nature of personal expenditure of doctors cannot by any standard be termed as expenditure relating to the assessee's business. The expenditure incurred by the assessee in providing samples and other complimentary are separately debited by the assessee under other selling expenses/local doctors meet. This expenditure cannot therefore be held to be exclusively laid out for the purpose of assessee's business. He further noted that the entire expenditure was debited by the assessee under the head "Individual Doctors Services" which clearly indicates that the expenditure incurred is more for the individual services of doctors than for the purpose of the assessee's business. Hence, he held that the expenditure of Rs. 8,84,41,258/- debited under the head individual Doctors Service cannot be allowed as expenditure exclusively laid out for the purpose of the assessee's business. He, therefore disallowed the same and added back to the assessee's income, as inadmissible expenditure.

6. The learned CIT (A) decided the issue against the assessee and in further appeal by the assessee, the Tribunal restored the issue to the file of the Assessing Officer to examine the nature of expenditure and whether the same can be allowed as incurred for the purpose of business and decide the issue afresh. The Assessing Officer in the order passed u/s 143(3) r.w.s. 254 of the I.T. Act repeated the addition and the learned CIT (A) sustained the addition so made by the Assessing Officer. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

> *"1. The learned CIT (A) erred in not considering submission made during the hearing and upholding AO's Order on disallowance of marketing expenditure incurred towards Local doctors meeting for the purpose of business.*
>
> *2. The learned CIT (A) erred in not considering submission made during the hearing and upholding AO's Order on disallowance of marketing expenditure incurred towards individual doctors meet for the purpose of business.*
>
> *3 The appellant craves to add/modify any other ground during the appeal proceedings"*.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case made addition of Rs.1,03,29,388/- out of the expenditure claimed at Rs.10,38,84,655/- as expenditure under the head "Local Doctors' Meet" and addition of Rs.8,84,41,258/- on a/c of individual doctor's services.

8. So far as the addition of Rs.8,84,41,258/- made by the Assessing Officer is concerned, we find the Assessing Officer while disallowing the same held that such expenditure cannot be accepted as laid out wholly and exclusively for the purpose of assessee's business. Similarly, the Assessing Officer disallowed the amount of Rs.1,03,29,388/- out of Rs.10,38,84,655/- claimed as 'local doctors meet' on the ground that the same is in the nature of personal expenditure of individual doctors. We find the learned CIT (A) upheld the action of the Assessing Officer on the ground that such expenditure is prohibited by the Medical Council of India under the powers vested on them and therefore, section 37 comes into the place. Relying on the decision of the Mumbai Bench of the Tribunal in the case of Live Healthcare Ltd in ITA Nos. 905 & 945/Mum/2013, dated 12th September, 2016

he upheld the action of the Assessing Officer in disallowing Rs.1,03,29,388/- and Rs.8,84,41,258/- claimed as local doctors meet and individual doctors services respectively.

9. We find the issue now stands decided against the assessee and in favour of the Revenue by the decision of the Hon'ble Supreme Court in the case of M/s. Apex Laboratories Ltd vs. Dy. CIT in Special Leave Petition (Civil) No.23207 of 2019, dated 22.02.2022. We find the Hon'ble Supreme Court in that order at Para 27 has observed as under:

> *"27. It is also a settled principle of law that no court will lend its aid to a party that roots its cause of action in an immoral or illegal act (ex dolo malo non oritur action) meaning that none should be allowed to profit from any wrongdoing coupled with the fact that statutory regimes should be coherent and not self-defeating. Doctors and pharmacists being complementary and supplementary to each other in the medical profession, a comprehensive view must be adopted to regulate their conduct in view of the contemporary statutory regimes and regulations. Therefore, denial of the tax benefit cannot be construed as penalizing the assessee pharmaceutical company. Only its participation in what is plainly an action prohibited by law, precludes the assessee from claiming it as a deductible expenditure".*

10. Similarly, at Para 33 of the order, the Hon'ble Supreme Court has observed as under:

> *"33. Thus, pharmaceutical companies' gifting freebies to doctors, etc. is clearly "prohibited by law", and not allowed to be claimed as a deduction under Section 37(1). Doing so would wholly undermine public policy. The well-established 21 principle of interpretation of taxing statutes – that they need to be interpreted strictly – cannot sustain when it results in an absurdity contrary to the intentions of the Parliament. A Bench of this Court in C.W.S. (India) Ltd. v. CIT32 held as follows:*
>
> *"While a literary construction may be the general rule in construing taxing enactments, it does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. Interpretation of statutes cannot be a mechanical exercise. Object of all the rules of interpretation is to give effect to the object of the enactment having regard to the language used".*
>
> *Justice Oliver Wendell Holmes had once said:*

> *"A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used." 33.*
>
> *Holmes thus summed up the elusive nature of words, which lies at the heart of the many issues concerning interpretation of statutes".*

11. Finally, the Hon'ble Supreme Court at Para 36 of the order has held as under:

> *"36. In the present case too, the incentives (or "freebies") given by Apex, to the doctors, had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded participation of the assessee- i.e., the provider or donor- was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., Apex."*

12. In view of the law laid down by the Hon'ble Apex Court in the case of Apex Laboratories Ltd (Supra), we do not find any infirmity in the order of the learned CIT (A) in sustaining the addition made by the Assessing Officer. Accordingly, the grounds raised by the assessee are dismissed.

ITA No.1722/Hyd/2016 – A.Y 2003-04

13. Grounds of appeal raised by the assessee read as under:

> *1. The learned CTT(A) erred in upholding the order of AO without adjudicating on the principles laid down u/s 10B/801B/80HHC.*
>
> *2 The learned CIT (A) erred in not considering submission made during the hearing and upholding AOs Order on disallowance of marketing expenditure incurred towards doctors meeting for the purpose business.*
>
> *3. The learned CIT (A) erred in not considering submission made during the hearing and upholding Assessing Officer's Order on disallowance of marketing expenditure incurred towards individual doctors meet 1or the purpose of business.*

4 The learned CIT (A) erred in upholding AO's Order on disallowance of maintenance expenditure treating the same as capital expenditure.

5. The appellant craves to add/modify any other ground during the appeal proceedings".

14. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noticed that the assessee company has not allocated the expenditure incurred on account of payment of sales commission to Directors, remuneration paid to directors and other general expenses to the units enjoying deduction u/s. 10B/80OHHC/8OIB of the I.T. Act, 1961. He found that a sum of Rs. 10,40,07,000/- was debited towards remuneration to directors besides other expenditure claimed as corporate expenditure which is not allocated to units enjoying exempt income. The assessee submitted that each of the unit have their own administrative staff, offices and other expenditure which are accounted in arriving at the profit of the undertaking. However, the explanation was not acceptable to the assessing officer and the assessing officer held that it cannot be said that corporate expenditure was incurred only for other than the tax exempted unit and the directors have put in their efforts and work only for units not enjoying any deduction under the Act. Their services were available for the entire organization including the units enjoying the deduction under the act and the corporate expenditure needs to be allocated to all the units. The assessing officer identified total expenditure to be considered for allocation amounting to Rs. 38,08,900/- and allocated the same to all the units.

15. In appeal, the learned CIT(A) held that corporate common expenditure needs to be allocated to all the units under same management. On further appeal, the Tribunal restored the

matter to the file of the Assessing Officer with a direction to appropriate the expenditure on the basis of turnover of various units. The Assessing Officer followed the direction of the Tribunal and appropriated the expenditure on the basis of turnover of various units. The assessee challenged the order of the Assessing Officer before the learned CIT (A) who dismissed the same on the ground that the Assessing Officer has followed the direction of the Tribunal and therefore, the assessee should not have agitated the issue again before the learned CIT (A). Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal.

16. After hearing both the sides, we find the learned CIT (A) while deciding the issue has relied on the order of the Tribunal in assessee's own case vide ITA Nos.739 & 635/Hyd/2007. Since the learned CIT (A) has followed the decision of the Tribunal in assessee's own case, therefore, in absence of any contrary material brought to our notice, we do not find any illegality or perversities in the order of the learned CIT (A) on this issue. Ground of appeal No.1 raised by the assessee is accordingly dismissed.

17. So far as grounds of appeal No.2 & 3 are concerned, we find that the above grounds are identical to the grounds of appeal in ITA No.949/Hyd/2017 for the A.Y 2006-07. We have already decided the issue and the grounds raised by the assessee have been dismissed. Following similar reasoning, the above grounds raised by the assessee are dismissed.

18. So far as ground of appeal No.4 is concerned, the learned Counsel for the assessee did not press this ground due to

smallness of the amount for which the learned DR has no objection. Accordingly, the above ground raised by the assessee is dismissed as not pressed.

19. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced in the Open Court on 17TH August, 2022.

Sd/-	**Sd/-**
(LALIET KUMAR) **JUDICIAL MEMBER**	**(R.K. PANDA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 17th August, 2022.
Vinodan/sps

Copy to:

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3	CIT (A)-5,Hyderabad
4	Pr. CIT-5, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order