

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No. 7227/Del/2018
(Assessment Year : 2014-15)

Mankind Pharma Ltd. 84, Okhla Industrial Estate, Phase – 3, New Delhi-110020 PAN No. AAACM 9401 C (APPELLANT)	Vs.	DCIT Circle – 1 Meerut (RESPONDENT)
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Assessee by	Shri Rajkumar, C.A.
Revenue by	Shri Jitender Chand, Sr. D.R.

Date of hearing:	01.09.2022
Date of Pronouncement:	12.09.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order of the Deputy Commissioner of Income Tax, Circle-1, Meerut under section 144C(13) read with Section 143(3) of the Income Tax Act pursuant to the direction of Dispute Resolution Panel (DRP) – 2, New Delhi order dated 23.08.2018 under Section 144C(5) of the Act for Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of manufacturing and marketing of pharmaceutical and healthcare products. Assessee originally filed its return of income for A.Y. 2014-15 on 30.11.2014 declaring total income of Rs.4,19,43,77,124/-. Assessee thereafter revised return of income on 19.05.2015 declaring total income of Rs.4,18,92,68,457/-. The case was selected for scrutiny and thereafter assessment was framed u/s 144C(13) r.w.s 143(3) of the Act vide order dated 12.09.2018 and the total income was determined at Rs.4,20,50,55,730/-. Aggrieved by the order of AO, assessee is now in appeal and has raised the following grounds:

1. *“That under the facts and circumstances, there is no legality as well as justification on merits for disallowance of the sales promotion expenses of Rs.1,06,78,600/- by holding the same as hit by explanation to Section 37(1) of the Act.*

2. *“The appellant carves to add/amend/alter any or all grounds of appeal at the time of hearing.”*

4. During the course of assessment proceedings, AO noticed that during the year under consideration, assessee had made payment amounting to Rs.1,06,78,600/- to the Doctors by way of gift cards which could be exchanged for cash/merchandise from various locations and the same was debited to “Business Promotion Expenses”. AO was of the view that payment of all gratification money by Pharmaceutical Companies to the Doctors

is prohibited as per the guidelines issued by Medical Council of India (MCI) vide its Notification No.MCI-211(1)/2009(ethics)/5567 dated 10.12.2009. He further noted that CBDT Circular No.5/2012 dated 01.08.2012 has observed that such type of expenses were covered under Explanation to Section 37(1) of the Act. He accordingly following the Circular of CBDT, disallowed the amount of Rs.1,06,78,600/- and made its addition. Aggrieved by the order of AO, assessee is now before us.

5. Before us, at the outset, Learned AR fairly submitted that issue raised in the present appeal is covered against the assessee by the decision of Hon'ble Apex Court in the case of **M/s. Apex Laboratories Pvt. Ltd. vs. DCIT (2022) 135 Taxmann.com 286 (SC)**. He therefore submitted that the issue be decided accordingly.

6. Learned DR on the other hand did not controvert the submissions made by Learned AR but supported the lower authorities.

7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of sale promotion expenses of Rs.1,06,78,600/- by holding it to be covered by Explanation of Section 37(1) of the Act. We find that Hon'ble Apex Court in the case of **Apex Laboratories Pvt. Ltd. (supra)** has held that

acceptance of freebies by medical practitioners was punishable as per Circular issued by Medical Council of India under MCI Regulations, 2022, gifting of such freebies to medical practitioners would also be prohibited by law and therefore expenditure incurred in distribution of freebies would not be allowed as deduction in view of Explanation – 1 to Section 37(1) of the Act. Before us, no contrary binding decision in its support has been placed by assessee. Further, before us, Learned AR has also admitted that the issue in the present appeal is covered against the assessee by the decision of aforesaid Apex Court. In such a situation, we do not find any reason to interfere with the order of CIT(A). **Thus the grounds of assessee is dismissed.**

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 12.09.2022

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 12.09.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI