

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.9403/Del/2019  
Assessment Year: 2016-17

<b>ACIT Circle - 61(1) New Delhi</b>	<b>Vs</b>	<b>Remfry &amp; Sagar 8, Raya Business Centre, Nangal Raya, New Delhi-110046 PAN No.AAEFR6753P</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Ms. Sapna Bhatia, CIT DR
Respondent by	Sh. KVSr Krishna, CA

Date of hearing:	17/04/2023
Date of Pronouncement:	19/04/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-20, New Delhi dated 24.09.2019 pertaining to A.Y.2016-17.

2. The grievance of the revenue read as under :-

1. *Whether the Hon'ble ITAT has erred in replying on Hon'ble ITAT decision to alio the license fees paid to M/s Remfry & Sagar Consultants Private Ltd. for use of goodwill by the assessee?*

2. *Whether the Ld. ITAT has erred in relying on Hon'ble ITAT decision and not appreciating that there was no requirement to gift the goodwill of a Law firm to a*

*Private Limited Company, which is especially prohibited from practicing law in India, as per the Advocates Act, 1961 and Bar Council Rules, and the same is nothing but a colorable device for tax evasion?*

3. *Whether the Ld. ITAT erred in relying on Hon'ble ITAT decision and failed to consider Explanation 1 of Section 37 which explicitly prohibits allowing any expenditure for a purpose which is not wholly and exclusively for business and profession.*

4. *Whether the Ld. ITAT erred in relying on Hon'ble ITAT decision and not appreciating that Dr. V. Sagar was all along practicing in the firm, first as a sole proprietor and then as a Senior Partner, so the firm was all along in business and that the private company M/s. Remfry & Sagar Consultants Private Ltd., is just a device which was formed to circumvent taxes in the hand of private non law practicing individuals which is barred by law?*

5. *Whether the Ld. ITAT erred in relying on Hon'ble ITAT decision and fallen into legal error, by holding that the Assessing officer is not entitled to question the genuineness or necessity of a transaction or payment made during the previous year in the business of the assessee during an assessment proceeding, under the mandate of section 37 of the Income Tax Act, 1961 and should only rely upon the reason and necessity presented by the assessee, even if they are not genuine or bona fide?*

6. *Whether the Ld. ITAT erred in relying on Hon'ble ITAT decision in not appreciating that the total gain or loss of tax collection to the revenue is not the criteria to allow or disallow business expenditure under the Act rather it is the fulfillment of conditions as per section 37 of the Income Tax Act. 1961?*

7. *Whether the Hon'ble ITAT erred in relying on Hon'ble ITAT decision in striking down the disallowance made in respect of payments made to RSCPL towards license fees payment for use of goodwill?*

3. At the very outset the Counsel for the assessee stated that the impugned quarrel has been considered and decided by this Tribunal in assessee's own case in earlier assessment years starting by A.Y.2003-04 to 2007-08 and in subsequent A.Y.2012-13 and 2015-16. The Counsel supplied the copy of the order of this Tribunal.

4. Per contra though the DR strongly placed reliance on the assessment order but could not bring distinguishing decision in favour of the revenue.

5. We have carefully considered the orders of the authorities below. The impugned quarrel can be understood from the following facts :-

*“The facts of the case are that Remfry & Sagar was a law firm established in 1827. Dr. V. Sagar became the proprietor of this law firm in 1973 and carried on the practice in his own name until June 2001. On 01.06.2001, Dr. V. Sagar gifted the goodwill in the name of Remfry & Sagar and all rights associated to M/s. R&S Consultants Pvt. Ltd without any consideration. The value of goodwill was valued at Rs. 45 cr. On 05.06.2001 Dr. V. Sagar entered into a partnership agreement with Sh. R. Sampath Kumar, Sh. Ashwin Jhulka, Sh. Ramit Nagpal and Sh. Prem Nath Sewak and simultaneously on 5.6.2001, license for the use of Goodwill Agreement was entered into between Remfry & Sagar Consultants Pvt. Ltd. and the above five partners who had constituted the partnership in the name of Remfry & Sagar. License was granted for the use of goodwill of ‘Remfry & Sagar’ for a consideration which was provided in clause 14.1 as 25% of the amount of bills raised by the partnership firm.”*

6. The entire license fee was disallowed by the AO holding as under :-

*“In view of the above discussion, it is held that the assessee has wrongly claimed a deduction of license fee payment to M/s. Refry & Sagar Consultants Pvt. Ltd. for the use of the said goodwill. The claim is thus, disallowed. Accordingly, an addition of*

*Rs.39,93,61,607/- is made to the income of the assessee firm. In view of the above, I am satisfied that the assessee has furnished inaccurate particulars of income. It is, therefore, penalty proceedings u/s.271 (1) (c) has been initiated separately for furnishing inaccurate particulars of income.”*

7. This quarrel was considered by this Tribunal in ITA No.1561/Del/2011 for A.Y.2007-08, 1084/Del/2014 for A.Y.2010-11, 3667/Del/2013 to 3669/Del/2013 for A.Y.2003-04 to 2006-07. The relevant findings of the coordinate Bench read as under :-

*“8.18 Another important fact that has to be considered is that Dr. V. Sagar had the sole and exclusive rights to the said goodwill. The goodwill was held by him. Without legal authorization from him, the assessee firm could not use the name and style of “Remfry & Sagar” along with its goodwill and other assets and rights. The assessee firm had to seek permissions and licences to continue and carry on this profession under this name as it is run doing. Hence obtaining a license is a must for assessee firm to continue and carry on its profession as the goodwill is not owned by it the payment made in pursuance of an agreement which enables the assessee firm to carry on its professions, in the manner in which it is now doing, is definitely an expenditure laid down wholly and exclusively for the purpose of business or profession. The argument of the Ld. Special Council that the purpose test contemplated u/s 37 of the Act is not satisfied is devoid of merit. Irrespective of whether the gift of Dr. V. Sagar to RSCPL being ethical or not and irrespective of the fact whether the gift is legally valid or not from the view point of the assessee firm, as it could not have continued and carried on the profession of Attorneys-at-Law in the name of “Remfry & Sagar” and use its goodwill and all its associated rights without the impugned agreement with RSCPL. Hence the payment has to be held as that*

*which is incurred wholly and exclusively for the purpose of business or profession.*

8.19. *The contention of the Special Council for the Revenue that the arrangement is just a revenue shown arrangement is just an inference and is not supported by any material. Thus the argument of violation of Bar Council Rules is devoid of merit.*

8.20. *For all these reasons we are of the considered opinion that the deduction claimed by the assessee of license fee paid to M/s RSCPL has to be allowed as a deduction U/s 37 of the Act.”*

8. Similar view was taken by the coordinate Bench in ITA No. 2570/Del/2019 for A.Y. 2012-13 and ITA No.3115/Del/2019 for A.Y.2015-16.

9. Respectfully following the findings of the coordinate Bench (supra) we do not find any merit in the appeal by the revenue and the same is accordingly dismissed.

Order pronounced in the open court on 19.04.2023.

Sd/-

**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

Dated: .04.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi