

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 702/Ahd/2023  
(निर्धारण वर्ष / Assessment Years:2009-10)

<b>Zydus Lifesciences Ltd. (In case of Liva Healthcare Ltd. – Now Amalgamated with ZydusLifesciences Ltd.) 4<sup>th</sup> Floor, Zydus Corporate Park, Scheme No.63, Survey No. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, S.G. Highway, Ahmedabad</b>	<b>बनाम/ Vs.</b>	<b>The Dy.CIT Central Circle-2(1), Ahmedabad</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC6253G</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

<b>अपीलार्थी ओर से/Appellant by :</b>	Shri Mukesh Patel & Shri Jigar Patel, A.Rs.
<b>प्रत्यर्थी की ओर से/Respondentby:</b>	Ms.Saumya Pandey Jain, Sr.D.R.

<b>Date of Hearing</b>	12/03/2024
<b>Date of Pronouncement</b>	30//05/2024

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the order dated 21.07.2023 passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad (in short ‘the CIT(A)’), arising out of the order dated 22.12.2017

passed by the DCIT, Circle-1(1)(2), Ahmedabad (in short 'AO') under Section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2009-10, whereby and whereunder the addition of Rs.19,01,250/- out of the total addition of Rs.25,75,966/- made by the Ld. AO on account of expenditure incurred on 'Free Physicians Samples' by the appellant has been upheld.

2. The brief facts leading to the case is this that the appellant is in the business of dermatology pharmaceutical products mainly used for skincare and treatment. It purchases finished formulations from pharmaceutical manufacturers on principal-to-principal basis and it markets the same throughout the country using its marketing and distribution network. In order to test the product's efficacy, it is required to be applied to patients and medical practitioners only could get to know about the effectiveness of such products and their medicinal and curative value, once it is applied on the patient under their treatment. In order to achieve this objective, physician's samples are distributed by the assessee company which is also practiced in the year under consideration. The free samples were distributed to Doctors/medical practitioners through its field and marketing staff in order to obtain reliable feedback and response from them in regard to the efficacy of its products. This distribution of free samples is, therefore, directly related to business promotion activity of the pharmaceutical company. It is, thus, wholly and exclusively for the purpose of business of the company as the case made out by the appellant.

3. In the year under consideration, the original assessment under Section 143(3) of the Act was finalized by the ACIT, Circle-6(3) upon disallowing a

sum of Rs.31,68,750/- being 25% of the total expenditure of Rs.1,26,75,000/- in respect of samples distributed to the Doctors during the year under consideration which stood deleted by the First Appellate Authority by its order dated 08.11.2012. However, the ITAT Mumbai Bench by an under the order dated 12.09.2016 pleased to set aside the order passed by the Learned CIT(A) and restored the issue to the file of the Ld. AO for de novo determination of the same on merit in the appeal preferred by the Revenue. The Ld. AO finalized the de novo assessment proceeding by and under the order dated 22.12.2017 under Section 143(3) r.w.s. 254 of the Act reducing the *ad hoc* disallowance from Rs.31,68,750/- to Rs.25,75,966/- treating the same as disallowance under Section 37 r. w. Explanation of the Act. The Ld. CIT(A) restricted the said addition to Rs.19,01,250/-. Hence, the instant appeal before us.

4. At the time of hearing of the appeal, the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered in assessee's own case for A.Ys. 2008-09, 2010-11 & 2011-12. Moreso, the Revenue's appeal against the orders passed by the ITAT for A.Ys. 2008-09, 2010-11 & 2012-13 stood dismissed by the Hon'ble Gujarat High Court. The copy of each of the judgment has been furnished before us by annexing the same in the paper book.

5. On the other hand, the Ld. DR though relied upon the orders passed by the authorities below, practically has not been able to submit anything contrary to the order passed by the Hon'ble Gujarat High Court upholding the order passed by the ITAT granting relief in assessee's own case.

6. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record.

7. We find that the Mumbai Bench in assessee's own case in ITA No.847/Mum/2012 for A.Y. 2008-09 while dealing with the issue, has been pleased to observe as follows:

*“3. The sole issue taken by the Revenue in its appeal is regarding the deletion of the disallowance of 70% of expense incurred by the assessee on physician's samples. The assessee is engaged in the business of manufacturing of drugs and pharmaceuticals. During the course of assessment proceedings, the A.O. noticed that the assessee had claimed expenses in relation to free samples distributed to physicians. The A.O., however, observed that the assessee could not prove that the amount expensed was exclusively for business purpose of the assessee. He observed that the assessee could not provide the list of Doctors and the confirmations from them regarding the receipt of physician's sample. He, therefore, disallowed 70% of the total expenditure on this account, and added the same to the total income of the assessee. In appeal, the Id. CIT(A), however, observed that the assessee had been engaged in the business of manufacture and marketing of pharmaceutical formulations, mainly skin care products. In the course of its business, it distributed physician's sample to various doctors all over the country. He further observed that the A.O. while disallowing the expenditure, relied on the orders of the DRP (Dispute Resolution Panel) in the case of two other companies namely, (i) Glaxo Pharma and Merck Pharma. However, it had not been pointed out by the A.O, how the above cases were identical to the case of the assessee. The A.O., had not discussed how the case of the assessee was covered by the findings of the Id. DRP in the above stated two cases. He, therefore, analysed the facts of the case of the assessee independently. He observed that the details of purchase made by the assessee from the manufacturers of the product which constituted free samples, were furnished by the assessee. The entries relating to the name of the product, quality/quantity, rate, date, and amount were entered in its register and along with the invoices. The assessee had co-related the name of the product, the quality/quantity, rate, date and amount entered in the purchase register with that of the purchase bills. In the purchase register, the above stated goods were marked as 'Physician Sample'. The receipts of the said sample were supported by delivery challans and Invoices. Even, the samples were dispatched through courier/transport, agency. The sample dispatch register*

*carried the details of date, serial number, representative number, name of the medical representative, place, transport, weight of the case, freight LR number and the date of receipt. This register was substantiated by the delivery challans and invoice of the transporter and its bills which clearly mentioned the date of delivery, number of package, weight, freight charged etc. The assessee also demonstrated that the samples received were handled by the medical representative who maintained & daily report sheet, recording the code no., name of the doctor, specialty and the medicines given to the doctor as physicians sample. These daily record sheets were used to be submitted by the medical representatives to the assessee company on daily basis, which constitute the record of the free physician sample distribution. Besides that the assessee had also submitted confirmations of doctors from Ahmedabad who had been beneficiaries of the free samples. The ld. CIT(A) observed that the A.O. had not doubted the genuineness of the distribution of samples carried out by the assessee. The A.O. only doubted the business expediency of the distribution of the free samples. The ld.CTT(A) further observed that the distribution of free samples were directly related to the business promotion activity of the assessee. The assessee had duly proved the genuineness of the expenses, proper recording in its books of account and the relationship of the expense with the business of the assessee, He, therefore, deleted the additions so made by the A.O.*

*4. We have gone through the well reasoned order passed by the ld.CIT(A). It is a known fact that the free sample of medicines supplied to the doctors is done for the promotion of the product of the company. Even when a new product is launched, the doctors are given necessary inputs regarding the use and effects etc. of the product and which also contributes imparting knowledge to the doctors about the new medicine/product coining into the relevant for practice of their profession. The genuineness of the transactions has not been doubted by the A.O, We do not find any infirmity in the well reasoned order passed by the ld. CIT(A) holding that the expenses were incurred for the business promotion activity of the assessee. We therefore do not find any merit in the appeal filed by the Revenue arid accordingly dismiss the same.”*

8. We further find that the Hon’ble Gujarat High Court dismissed the appeal preferred by the Revenue out of the said order passed by ITAT for A.Y. 2008-09 with the following observation:

*"1. The Revenue is in appeal against the judgment of Income Tax Appellate Tribunal raising following substantial question of law*

*"Whether the Appellate Tribunal was right in law and on facts, in deleting the disallowance of Rs.44,61,4007- being 70% of the expenditure in respect of Physicians' Sample?"*

*2. The issue pertains to disallowance of Rs.44.61 lacs (rounded off) representing 70% of the expenditure claimed by the assessee in respect of free Physicians' samples. The respondent assessee is in the business of manufacturing pharmaceutical drugs. In the course of business, it supplies free samples to the Doctors. Expenditure relatable to such free samples was claimed as an business expenditure. The Assessing Officer disallowed 70% thereof upon which the assessee appealed to the Commissioner of Income Tax (Appeals),who deleted the disallowance. The Revenue approached the Tribunal. By the impugned judgment, the Tribunal upheld the decision of Commissioner of Income Tax (Appeals). In the process, the Tribunal made following observations:*

*"4. We have gone through the well reasoned order passed by the ld. CIT(A). It is a known fact that the free sample of medicines supplied to the doctors is done for the promotion of the product of the company. Even when a new product is launched, the doctors are given necessary inputs regarding the use and effects etc. of the product and which also contributes imparting knowledge to the doctors about the new medicine/product coming into the relevant for practice of their profession. The genuineness of the transactions has not been doubted by the A.O. We do not find any infirmity in the well reasoned order passed by the Ld. CIT(A)holding that he expenses were incurred for the business promotion activity of the assessee. We therefore do not find any merit in the appeal filed by the Revenue and accordingly dismiss the same."*

*3. Perusal of the orders on record would demonstrate that the issue is primarily in the realm of appreciation of material on records. Even the Assessing Officer allowed part of the expenditure, thereby indicating that he would not averse to the expenditure in the nature of free samples being related to assessee's business. He only disputed the quantification. When Commissioner of Income Tax (Appeals) concurrently found sufficient reason to accept the assessee's claim, we do not see any question of law arising."*

9. In the Assessment Year 2010-11 also the revenue preferred appeal against the order passed by the ITAT deleting the addition made on account of disallowance of expenditure in respect of physician sample. While dealing with the issue the Hon'ble Court was pleased to observe as follows:

*"1. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Income Tax Appellate Tribunal, "D" Bench, Ahmedabad (hereinafter referred to as "the learned Tribunal") dated 22/08/2017 in ITA No.2204/Ahd/2014 for the Assessment Year 2010-11, revenue has preferred the present Tax Appeal with the following proposed question of law;*

*"Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.70 lacs u/s 37(1) of the Act relating to Physicians Free Samples?"*

*2. We have heard Shri Manish Bhatt, learned Senior Advocate appearing on behalf of the revenue. Considering the impugned order passed by the learned Tribunal, it appears and it is not in dispute that while passing the impugned order, the learned Tribunal has relied upon its earlier order in the case of the very assessee but with respect to the earlier Assessment Year, It is reported that the Appeal against the order passed by the learned Tribunal in the case of the very assessee but with respect to the earlier Assessment Year, being Tax Appeal No.478/2016, has been dismissed by the Division Bench vide order dated 21/06/2016. Under the circumstances, so far as this Court is concerned, the issue is concluded against the revenue.*

*3. Under the circumstances, no substantial question of law arises in view of the above concluded question in the case of the very assessee but with respect to the earlier Assessment Year. Under the circumstances, present Appeal deserves to be dismissed and is accordingly dismissed."*

10. For A.Y. 2012-13, in assessee's own case, the appeal preferred by the Revenue has been found to be dismissed by the Hon'ble Jurisdictional High Court with the following observation:

*"1.00. The revenue has proposed the following four substantial questions of law for the consideration of this Court:-*

*"[A]. Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.1,42,44,447/- being 70% of the expenditure in respect of physician sample distribution at free of costs?*

*[B]. Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.1,17,53,365/- made by the Assessing Officer on account of sponsorship of doctors foreign tour in view of the CBDT's Circular No.05/2012 dated 01.08.2013?*

*[C]. Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.61,28,797/- made by the Assessing Officer on account of sales promotion expenses in view of the CBDT's Circular No. 05/2012 dated 01.08.2013?*

*[D] Whether the Appellate Tribunal has erred in law and on facts in deleting the disallowance of Rs.50,00,000/- made by the Assessing Officer rejecting the assessee's claim of exemption?"*

*2.00 We are not inclined to entertain this Tax Appeal so far as the proposed question [A] is concerned, as the same is covered by the decision of this court in the case of Principal Commissioner of Income Tax-I Versus Liva Health Care Limited, in Tax Appeal No. 478 of 2016 decided on 21/6/2016. We take notice of the fact that in Tax Appeal No. 478 of 2016 the very same assessee was before this Court.*

*3.00. So far as the question [D] is concerned, the same is also, the same is covered by the decision of this Court in the case of Commissioner of Income-Tax-I Versus Aditya Medisales Ltd., reported in [2013] 38taxmann.com 244 (Gujarat) and therefore we are not inclined to entertain this Tax Appeal so far as the proposed question [D] is concerned."*

11. Thus, considering the above judicial pronouncements, particularly of the jurisdictional High Court, and respectfully relying upon the same, we do not hesitate to hold that the issue is squarely covered in favour of the assessee; the expenditure relatable to the free samples of pharmaceuticals supplied to the Physicians/Doctors found to be incurred wholly and exclusively for the business purpose of the assessee. In that view of the matter, we do not find

any merit in the order passed by the authorities below in disallowing the same.  
The addition, therefore, is deleted.

12. In the result, appeal preferred by the assessee is allowed.

**This Order pronounced on 30/05/2024**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**      *True Copy*

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Ahmedabad;      Dated 30/05/2024

S. K. SINHA\*

**आदेश की प्रतिलिपि अग्रेषित/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 प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,  
Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**