

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA Nos. 1310 & 1311/Chny/2023
& ITA No.441/Chny/2024
(निर्धारणवर्ष / Assessment Years:2014-15, 2015-16 and 2016-2017)

M/s. Cook India Medical Devices
Private Limited,
Plot No.22, SP, 3rd and 4th floor,
Kochar Jade,
Thiru-vi-ka Industrial Estate,
Guindy,
Chennai 600 032.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2)
Chennai.

[PAN: AACCC 7628P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Vijayaraghavan, Advocate
: Shri. R. Mukundan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 12.06.2024

घोषणा की तारीख /Date of Pronouncement

: 19.06.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

Captioned appeals ITA Nos.1310 to 1311/Chny/2023 and 441/Chny/2024 by assessee Cook India Medical Devices Private Limited ('CIMDPL'/ 'Appellant' in short) are directed against the orders of the Ld.Commissioner of Income

Tax(Appeals)(NFAC) Delhi [CIT(A)] of even date 23.09.2023 for Assessment Years (AYs) 2014-15, 2015-16 and dated 26.12.2023 for Assessment Year 2016-17.

2. Grounds of appeal for Assessment Years (AYs) 2014-15, 2015-16 and 2016-17 are as under:-

Grounds of appeal for assessment year 2014-2015:-

“1. The order of NFAC / CIT(Appeals) is contrary to law, facts and in the circumstances of the case.

Recharge Expenses - Rs. 27,85,396/-

2. The NFAC / CIT(Appeals) erred in confirming the disallowance of the amount paid for shared services without giving any opportunity of personal hearing to the Appellant to explain their position.

2.1 The NFAC / CIT(Appeals) ought to have appreciated that in Appellant's own case for the assessment year 2012-13, the Hon'ble Tribunal in IT(TP) A No.22/Chny/2019 dated 26.09.2022 has upheld the allowance of share of expenses at 5% mark up on operating cost. Following the same the claim of the Appellant requires to be allowed.

2.2. The APA in their order dated 31-03-2023 has also agreed for allowance of the shared cost at operating cost plus 5% mark up. The direction of the APA for the assessment year 2015-16 and the order of the Tribunal for the assessment year 2012- 13 should be followed and the claim of the Appellant should be allowed.

Conference /Meeting expenses of Rs. 1,52,09,223/-

3. The NFAC / CIT(Appeals) erred in disallowing expenses incurred in conferences / meetings without granting any opportunity of personal hearing to the Appellant to explain their position.

3.1 The NFAC / CIT (Appeals) ought to have appreciated that the amount spent by the Appellant on conference / meeting expenses are only in the nature of contribution to various Medical Societies for conducting seminars on medical in which the products of the appellant are also involved.

3.2 The NFAC/CIT(Appeals) ought to have appreciated that at various seminars / conferences the appellant has been permitted to put up a stall and display their products which is in the nature of advertisement of their products and therefore expenditure is an allowance expenses.

3.3 The NFAC/ CIT(Appeals) ought to have appreciated that the Appellant does not advertise in any other media platform such as Radio, TV, Newspapers etc and Seminars are the only occasions in which the Company can advertise their products as well as explain the composition and usage of the product directly to the Doctors. This kind of advertisement is essential for sale of the products.

3.4. *The NFAC/CIT(Appeals) ought to have appreciated that the Appellant had not given any gifts, free samples or bear any direct expenditure of the Doctors which has been prohibited by the Indian Medical Association.*

3.5 *The Appellant therefore submits that the entire expenses on conference / meeting are in the nature of advertisement and does not violate the direction of the Indian Medical Association and hence should be allowed in full.*

4. *The appellant craves leave to file additional grounds at the time of hearing''.*

Grounds of appeal for assessment year 2015-2016:-

''1. The order of NFAC / CIT(Appeals) is contrary to law, facts and in the circumstances of the case.

Recharge Expenses - Rs. 4,70,01,014/-

2. *The NFAC/CIT(Appeals) erred in confirming the disallowance of the amount paid for shared services without giving any opportunity of personal hearing to the Appellant to explain their position.*

2.1 *The NFAC/CIT(Appeals) ought to have appreciated that in Appellant's own case for the assessment year 2012-13, the Hon'ble Tribunal in IT(TP) A No.22/Chny/2019 dated 26.09.2022 has upheld the allowance of share of expenses at 5% mark up on operating cost. Following the same the claim of the Appellant requires to be allowed.*

2.2. *The APA in their order dated 31-03-2023 has also agreed for allowance of the shared cost at operating cost plus 5% mark up. The direction of the APA for the assessment year 2015-16 and the order of the Tribunal for the assessment year 2012- 13 should be followed and the claim of the Appellant should be allowed.*

Conference /Meeting expenses of Rs. 1,76,75,811/-

3. *The NFAC/CIT(Appeals) erred in disallowing expenses incurred in conferences / meetings without granting any opportunity of personal hearing to the Appellant to explain their position.*

3.1 *The NFAC/CIT (Appeals) ought to have appreciated that the amount spent by the Appellant on conference / meeting expenses are only in the nature of contribution to various Medical Societies for conducting seminars on medical in which the products of the appellant are also involved.*

3.2 *The NFAC / CIT (Appeals) ought to have appreciated that at various seminars / conferences the appellant has been permitted to put up a stall and display their products which is in the nature of advertisement of their products and therefore expenditure is an allowance expenses.*

3.3 *The NFAC/ CIT(Appeals) ought to have appreciated that the Appellant does not advertise in any other media platform such as Radio, TV, Newspapers etc and Seminars are the only occasions in which the Company can advertise their products as well as explain the composition and usage of the product directly to the Doctors.*

This kind of advertisement is essential for sale of the products.

3.4. *The NFAC / CIT(Appeals) ought to have appreciated that the Appellant had not given any gifts, free samples or bear any direct expenditure of the Doctors which has been prohibited by the Indian Medical Association.*

3.5 *The Appellant therefore submits that the entire expenses on conference / meeting are in the nature of advertisement and does not violate the direction of the Indian Medical Association and hence should be allowed in full.*

4. *The appellant craves leave to file additional grounds at the time of hearing.*

Grounds of appeal for assessment year 2016-2017:-

‘1. The order of CIT(Appeals) is contrary to law, facts and in the circumstances of the case.

Conference /Meeting expenses of Rs.3, 17,93,994/-

3. The CIT(Appeals) erred in disallowing expenses incurred in conferences / meetings without granting any opportunity of personal hearing to the Appellant to explain position.

3.1 The CIT(Appeals) ought to have appreciated that the amount spent by the Appellant on conference / meeting expenses are only in the nature of contribution to various Medical Societies for conducting seminars on medical issues in which the products of the appellant are also involved.

3.2 The CIT (Appeals) ought to have appreciated that at various seminars / conferences the appellant has been permitted to put up a stall and display their products which is in the nature of advertisement of their products and therefore expenditure is an allowance expenses.

3.3 The CIT (Appeals) ought to have appreciated that the Appellant does not advertise in any other media platform such as Radio, TV, Newspapers etc and Seminars are the only occasions in which the Company can advertise their products as well as explain the composition and usage of the product directly to the Doctors. This kind of advertisement is essential for sale of the products.

3.4. The CIT (Appeals) ought to have appreciated that the Appellant had not given any gifts, free samples or bear any direct expenditure of the Doctors which has been prohibited by the Indian Medical Association.

3.5 The Appellant therefore submits that the entire expenses on conference / meeting are in the nature of advertisement and does not violate the direction of the Indian Medical Association and hence should be allowed in full.

4. The appellant craves leave to file additional grounds at the time of hearing’.

3. Ld.Counsel for the appellant submitted a petition for admission of additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 in all three appeals with regard to conference/meeting expenses and sponsorship meetings etc.. Ld.Counsel submitted that these evidences were not available at the time of assessment proceedings before the Assessing Officer as well as before the learned CIT(A), are now available. Hence, in the light of averments made in the petition he prayed for admission of additional evidence filed in the form of paper books for each year.

4. In support of petition for additional evidence, Ld. Counsel referred relevant excerpt of petition for admission of additional evidence under Rule 29 which are as under:

“The Appellant is in the business of manufacturer of medical device. In this field the Appellant is not permitted to advertise in normal medias Like Newspapers and Televisions. Therefore, in order to reach the Doctors and make them aware the Appellant's product it was necessary to participate in various Seminars and Programmes conducted by various medical organisation and put up a stall of the Appellant's products in such Seminars or Programmes.

Before the Assessing Officer and the First Appellate Authority, brochures of various seminars wherein the Appellant had put up a stall for their products were submitted, However the Lower Authorities did not appreciate the true purpose of participation in the Seminars and putting up stalls which is nothing but for advertisement of the products manufactured by the Appellant.

It was therefore felt that by way of clarification the Appellant should obtain certificates from the Institutions which had conducted various Seminars and Programmes, in which the appellant participated. Affirming that the true purpose of the Appellant's participation is for advertisement and the sponsorship amount in no way was utilized in a manner in contravention of the various circulars issued by the Medical Council of India in connection with providing any personal benefit to the Doctors.

It is therefore prayed that these additional evidences / certificates from the Institution conducting Seminars in which the Appellant had participated be admitted as it go into the route of the matter and considered in deciding the appeals of the Appellant’.

5. We have heard the rival submissions and gone through the petition for admission of additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 and find that aforesaid evidences were not available at the time of assessment proceedings before the Assessing Officer as well as before the learned CIT(A).

6. In this view of the matter, we, therefore, admit petitions for additional evidences now furnished by the assessee before us for consideration and examination by the Assessing Officer. Since the additional evidences in the form of

paper books for each year were not before the Assessing Officer at the time of making assessment and they were not examined on their merit, we find it fit and proper to restore the issue of conference/meeting expenses and sponsorship meetings etc raised in all three appeals to the file of the Assessing Officer for fresh adjudication after examining the additional evidences as well as any other evidences which may assessee furnish before the Assessing Officer or any other evidences that the Assessing Officer may brought on record and in accordance with recent judgment of Hon'ble Supreme Court dated 22 February 2022 in the case of *M/s Apex Laboratories Private Limited vs. DCIT 135 taxmann.com 286 (SC)*.

7. Now turning to the next issue of 'Recharge Expenses' arising in AYS 2014-15 and 2015-16.

8. At the outset, Ld.Counsel, referred the order of Coordinate Bench in assessee's own case in IT(TP) No.22/Chny/2019 dated 26.09.2022 for AY 2012-13 and contended that similar direction be given to AO re-compute the adjustments.

9. We have heard the learned representatives of both the parties and gone through the order of Coordinate Bench in assessee's own case in IT(TP) No.22/Chny/2019 dated 26.09.2022 for AY 2012-13. The Coordinate Bench in assessee's own case in IT(TP) No.22/Chny/2019 dated 26.09.2022 for AY 2012-13 held as under:

"1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of final assessment order passed by learned Assessing Officer (AO) on 29.12.2018 u/s 143(3) rws 92CA pursuant to the directions of Ld. DRP u/s 144C(5) dated 06.12.2018. The assessee being resident corporate assessee is stated to be engaged in manufacturing of

medical devices. In this appeal, the assessee is aggrieved by Transfer Pricing Adjustment of Rs.226.95 Lacs as proposed by learned Transfer Pricing Officer in its order dated 29.12.2015. The Ld. TPO has determined the value of Support fees services as received by the assessee as nil and proposed adjustment of Rs.265.83 Lacs. The Ld. DRP allowed part relief and directed Ld. AO to reduce the adjustment to Rs.226.95 Lacs. Aggrieved, the assessee is in further appeal before us.

2. The Ld. AR, at the outset, submitted that such services were received in subsequent years also and the assessee entered into Advance pricing Agreement (APA) with Hon'ble CBDT on 31.03.2021. The terms of the agreement apply to previous years 2014-15 to 2018- 19. The Ld AR pleaded that the adjustment may be re-computed for this year on the same basis. The Ld. CIT-DR submitted that the APA is only for subsequent years.

3. Considering the fact that the nature of services remain the same and the services emanates from same agreements, the bench has an opinion that the same benchmarking formula as prescribed for subsequent years could be applied for this year also to arrive at Arm's Length price (ALP) of the impugned transactions. Accordingly, we direct Ld. AO to re-compute the adjustment on the same basis as given in APA. The assessee has provided the working of the same which is as under:-

Particulars	Reference	Amount (in INR)
Actual cost incurred for intra-group services by assessee (consisting of internal costs & pass-through costs, benchmarked using TNMM)	A	2,65,83,539
TPO adjustment (benchmarked using CUP and setting ALP as NIL) i.e., ENTIRE costs of intra-group services were disallowed by TPO	B	2,65,83,539
DRP adjustment (partial relief of Rs.38,88,487/- based on certain invoices)		2,26,95,052
Total costs of intra-group services as per APA clause 6.2 (5% mark-up on operating cost; computed as internal cost actuals of Rs.2,37,95,144 + pass-through costs of Rs.8,84,783)	C	2,59,13,924
Revised TPO adjustment (on applying APA) – our prayer is this may be verified and given by the AO/TPO	D= C-A	6,69,615

The Ld. AO is directed to verify the same and restrict the adjustment to the extent indicated in the table. No other ground has been urged before us''.

10. Therefore, respectfully following the order of Coordinate Bench in assessee's own case in IT(TP) No.22/Chny/2019 dated 26.09.2022 for AY 2012-13, we direct the Ld.AO to follow same direction as directed by the Coordinate Bench referred supra.

11. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open court on 19th day of June, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated :19-06-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF