

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1095/Bang/2024
Assessment Year : 2018-19

M/s. Abbvie Therapeutics India Pvt. Ltd., Level 7 and Level 7 Prestige, Obelisk, Kasturba Road, Bangalore North, Bengaluru – 560 001. PAN : AABCA 6884 A	Vs.	DCIT, Circle – 1(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Tanmayee Rajkumar, Advocate.
Revenue by	:	Shri. D. K. Mishra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	30.09.2024
Date of Pronouncement	:	01.10.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the CIT(A)'s Order dated 31.03.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. The effective grounds viz., ground No.2 and its sub-grounds read as follows:

2. Disallowance of 'LPB SETT' Expenses under section 37 of the Act

The Ld. CIT(A) grossly erred in confirming the disallowance of Local Promotion Budget Settlement ('LPB SETT') expenditure of INR 64,438,642 under section 37 of the Act by alleging that —

a. 'LBP SETT' expenses are in nature of freebies given by the Appellant to the medical practitioners and are incurred towards

brand promotions, providing of medical books and journal to medical practitioners.

b. Expenses are not allowable as per CBDT Circular No. 5/2012 dated 1 August 2012.

2.2 The Ld. CIT(A) grossly erred in not taking cognizance of different categories of expenses accounted under 'LPB SETT' which are not in violation of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 ('IMC Regulations') and do not fall within the purview of Circular NO. 5/2012 dated 1 August 2012.

3. Brief facts of the case are as follows:

Assessee is a private limited company engaged in the business of trading of ophthalmic products. For the Assessment Year 2018-19, the return of income was filed declaring total income of Rs.149,13,02,950/-. The assessment was selected for scrutiny and notice under section 143(2) of the Act, was issued on 22.09.2019. During the course of assessment proceedings, assessee was directed to justify the claim of deduction in respect of Local Promotion Budget Settlement (LPB SETT) expenditure to the tune of Rs.6,44,38,642/- under section 37 of the Act. The notice issued from the Office of the AO was on 15.03.2021 directing the assessee to provide response by 18.03.2021. Assessee filed an adjournment application on 17.03.2021 seeking two weeks' time to file its response to the above mentioned show cause notice. The AO, without taking cognizant of the adjournment letter filed by the assessee, passed the Assessment Order under section 143(3) of the Act, on 23.03.2021, wherein he disallowed LPB SETT expenses of Rs.6,44,38,642/- based on CBDT's Circular No.5/2012 both under the normal provisions of the Act and for the purpose of computing book profits under section 115JB of the Act.

4. Aggrieved by the disallowance of LPB SETT expenses, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, assessee had filed

additional evidence in support of its claim of deduction of LPB SETT expenses under section 37 of the Act. It was contended by the assessee before the FAA that Assessment Order has been passed in violation of principles of natural justice. On merits, assessee had given bifurcation of the aforesaid expenses and submitted that many of these expenses are not incurred as freebees for doctors or medical practitioners. It was contended that the judgment of the Hon'ble Apex Court in the case of Apex Laboratories (P) Ltd., Vs. DCIT, LTU [2022] 135 taxmann.com 286 (SC) is not applicable to the facts of the instant case since the assessee had not incurred the expenditure towards gifting freebees to the medical practitioner for creating awareness about its products. The CIT(A), however, rejected the contentions of the assessee and confirmed the AO's view in disallowance of expenses of Rs.6,44,38,642/- for violating the provisions of section 37 of the Act, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (IIMC Regulations'). In this context, the FAA relied on the CBDT Circular No.5/2012 dated 01.08.2012 and the Hon'ble Apex Court judgment in the case of Apex Laboratories (P) Ltd., Vs. DCIT (supra).

5. Aggrieved by the FAA's Order, assessee has filed the present appeal before the Tribunal. The assessee had filed two sets of Paper Book. In the first set of Paper Book, assessee had enclosed the notices issued from the Office of the AO and the CIT(A), the submission furnished during the course of FAA's proceedings. In volume 2 of the Paper Book, assessee had furnished Appendices to the written submissions dated 09.06.2022 filed before the FAA. The learned AR, by relying on the Order of Mumbai Bench of the Tribunal in the case of IPCA Laboratories Ltd., Vs. DCIT reported in (2024) 161 taxmann.com 511 (Mumbai - Trib.) submitted that many of the identical expenses have been allowed by Mumbai Bench of the Tribunal as a deduction under section 37 of the Act, since these expenditures were not incurred as freebees to doctors or medical professionals.

6. The learned DR supported the Orders of the AO and CIT(A).

7. We have heard the rival submissions and perused the material on record. As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (IIMC Regulations') which has been amended by insertion of clause 6.8 w.e.f. 10.12.2009, a medical practitioner belonging to the pharmaceutical or allied health sector shall not :

- Receive any gift from any pharmaceutical or allied health care industry and their sales people or representatives
- Accept any travel facility inside the country or outside. including rail, air, ship, cruise tickets, paid vacations, etc. from any pharmaceutical or allied health care industry or their representative for self and family members for vacation or for attending conferences, seminars. Workshops, CME program etc. as a delegate.
- Accept individually any hospitality like hotel accommodation for self and family members under any pretext. .
- Receive any cash or monetary grants from any pharmaceutical and allied healthcare industry for individual purpose in individual capacity under any pretext.

8. Thus, as per the amended IMCR regulation, a doctor shall not receive any freebees in the form of gifts, travel facility, hospitality, cash or monetary grants from any pharmaceutical or allied health care industries or their sales representatives. The assessee before the FAA has bifurcated the expenditure head of LPB SETT expenses. The assessee had filed detailed additional evidence claiming that certain expenses incurred are not freebees to doctors / medical practitioners. The assessee had filed application under Rule 46A of the Income Tax Rules, 1962, for admission of additional evidence before the FAA (Refer Page 254 and 255 of the Paper Book - I submitted by assessee). There is nothing in the impugned Order of the CIT(A) whereby it shows that he had rejected the assessee's application for

admission of additional evidence under Rule 46A of the of the Income Tax Rules, 1962, nor has the CIT(A) called for a remand report from the AO. The CIT(A) has omitted to consider the additional evidence that was filed before him. According to the assessee, the expenditure incurred such as 'organizing the promotional events' is in no way connected with the freebees to the doctors and the medical practitioners. It is the claim of the assessee that assessee had organized certain events for the promotion of its products and it had reimbursed the employees towards expenses incurred by them in respect of organizing such events which includes the cost towards venue, food, audio visuals, presentations, etc. For 'brand promotion products', it is claimed that assessee had incurred a sum of Rs.14,93,648/-. According to the AR the said expenditure has been incurred for advertising the assessee's products in the journals.

9. The Mumbai Bench of the Tribunal in the case of IPCA Laboratories Ltd., Vs. DCIT (supra), on identical facts, had allowed the expenditure on certain items that are mentioned in the assessee's submissions before the FAA. On the facts of the instant case, we are of the view that since the matter has not been considered properly by the AO (as there was no proper representation before him), we deem it appropriate to restore the matter to the AO. The assessee shall furnish the necessary evidence to claim that these expenditures are not violative of the IMC Regulations, etc. The AO, after considering the judgment of the Hon'ble Apex Court in the case of Apex Laboratories (P) Ltd., Vs. DCIT, LTU (supra) and the Order of the Mumbai Bench of the Tribunal in the case of IPCA Laboratories Ltd., Vs. DCIT (supra), shall decide the matter afresh. It is ordered accordingly.

10. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated : 01.10.2024.

/NS/*

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.