

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

**BEFORE
SHRI MANJUNATHA G., ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / ITA No. 408/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

Dr. Reddy's Laboratories Ltd. Hyderabad [PAN :AAACD7999Q]	Vs.	Dy. Commissioner of Income Tax Circle-8(1) Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri SP Chidambaram, AR
राजस्व द्वारा/Revenue by: Shri B.Bala Krishna,CIT- DR

सुनवाई की तारीख/Date of hearing: 09/10/2024
घोषणा की तारीख/Pronouncement on: 16/10/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 09/06/2023 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Dr.Reddys Laboratories ("the assessee") for the assessment year 2009-10, the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is engaged in the manufacture and sale of bulk drugs, APIs, Formulations and other pharmaceutical products. During the assessment year 2009-10, assessee incurred an amount of Rs.9,92,32,199/- towards local doctors meet and Rs.18,38,42,095/- towards Individual Doctor services in India and outside India for doctors conference, registration towards conference, travel and other related expenses for acquiring knowledge on the New Medicine, Novel Medicine through these conferences and for prescribing the right medicine to the patients and consequently helping the pharma companies.

3. Learned Assessing Officer disallowed the above expenditure and passed assessment order stating that the expenditure is in violation of the provisions of Indian Medical Council Regulations, 2002. On appeal before Dispute Resolution Panel (learned DRP), learned upheld the same. On appeal before the ITAT, ITAT directed the learned Assessing Officer to examine the business expediency of the expenditure, however, the AO disallowed the same. On appeal before CIT(A), learned CIT(A) upheld the disallowance made by the learned Assessing Officer and dismissed the appeal of the assessee on this ground.

4. Aggrieved by the order of the learned CIT(A), assessee is in appeal before us. Two issues are involved in this appeal. First one relates to the disallowance of the expenses incurred by the assessee for travel, stay, participation fee in the pharmaceutical conferences of the doctors and the grievance of the assessee is that the authorities failed to appreciate the fact that such an expenditure was incurred in connection with business and will promote the sales of the products of the assessee. Though the assessee

relied upon so many judgements to buttress its arguments on the aspect of the expense being “wholly and exclusively” and “necessarily etc.”, the fact remains that this issue is squarely covered by the decision of the Hon'ble Apex Court in the case of M/s Apex Laboratories Private Limited Vs. DCIT [2022] 135 Taxmann.com 288(SC) rendered in the light of NCI regulations and the CBDT Circular No.05/2012 dated 01/08/2012, wherein, the Hon'ble Apex Court held that the incentives or the freebies to the doctors had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine; that those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect; that the conceded participation of the donor was plainly prohibited as far as their receipt by the medical practitioners was concerned; and that the medical practitioners were forbidden from accepting such gifts or freebies was no less a prohibition on the part of their donor. On this premise, the Hon'ble Supreme Court upheld the order of the Hon'ble High Court of Madras which confirmed the partial allowance of the amounts claimed as business expenditure under section 37(1) of the Act.

5. It is brought to the notice of the Bench that in assessee's own case for the assessment year 2011-12, coordinate Bench of the Tribunal in ITA No.1231/Hyd/2018 by order dated 08/08/2022 by respectfully following the Apex Court decision in M/s Apex Laboratories Private Limited (supra), upheld the findings of the authorities. For the sake of complete, we deem it just and necessary to extract hereunder the relevant observations.

24. Ground No. 4 of assessee's appeal relates to the addition of Rs. 18,44,40,373/- by disallowing the expense which was incurred towards sponsorship on doctor's meet for the purpose of updating the doctors about new molecules and developments in medicine field. According to the assessee, this expenditure was incurred at various places including in the branch offices outside India, and it is in the nature of doctors' conference, complements, registration, travel and stay, medical journal, books and equipment etc.

25. Learned Assessing Officer disallowed the same stating that these expenses are in violation of MCI regulations and the CBDT Circular No.5 of 2012 which treats these expenses as inadmissible under section 37(1) of the Act. On this premise, he added Rs. 18,44,040/-.

26. Ld. CIT(A) placed reliance on the regulation of Medical Council prohibiting the medical practitioners from availing the freebies and also Circular No.5/2012 dt. 01/08/2012 held that inasmuch as the activities for which the expenditure was incurred and the acceptance of such hospitality is prohibited one, such an expenditure is not to be allowed under section 37(1) of the Act.

27. It is argued before us by the learned AR that the expenses are directly benefiting the assessee and there is a catena of case law permitting the allowance of such an expenditure, and more particularly he placed reliance on the view taken in assessee's own case by a Co-ordinate Bench of this Tribunal for the assessment year 2012-13 and reported in (2019) 102 taxmann.com 111 (Hyd. Trib).

28. Be that as it may, this aspect has been considered by the Hon'ble Apex Court in the case of M/s. Apex Laboratores Pvt. Ltd., Vs. DCIT in SLP (Civil) No. 23207 of 2019 and the Hon'ble Apex Court by order dt. 22/02/2022 reported in [2022] 135 taxmann.com 286 (SC) held that the incentives or the freebies to the doctors had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine; that those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect; that the conceded participation of the donor was plainly prohibited as far as their receipt by the medical practitioners was concerned; and that the medical practitioners were forbidden from accepting such gifts or freebies was no less a prohibition on the part of their donor. On this premise, the Hon'ble Supreme Court upheld the order of the Hon'ble High Court of Madras which confirmed the partial allowance of the amounts claimed as business expenditure under section 37(1) of the Act.

29. In view of this binding precedent rendered by the Hon'ble Apex Court, we are of the considered opinion that in order to qualify the expenditure as business expenditure, it is imperative on the part of the assessee to satisfy the learned Assessing Officer that the expenses are not in violation of the Medical Council's regulations and the circular issued by the CBDT. Assessment order reveals that under section 37(1) of the Act, an amount of Rs. 20,48,59,179/- was claimed as allowable expenditure, the assessee has already added a sum of Rs. 2,04,18,806/- in the computation of income and, therefore, the balance amount of Rs. 18,44,40,373/- was disallowed on the ground that such expense represents the expenditure which is purely personal in nature incurred on the doctors and other guests for travel, conveyance, lunch/dinner, gifts and complements etc., on the ground of business promotion but hit by the Circular No.5/2012 and in violation of the provisions of the Indian Medical Council Regulations, 2002.

30. Nothing contrary to the observations of the learned Assessing Officer is brought to our notice to say that this particular expenditure covered under disallowance is something else than in the nature of freebies to the doctors hit by the CBDT Circular No.5/2012 and the provisions of Indian Medical Council Regulations, 2002. As a matter of fact, Ld. CIT(A) also returned the same finding in the impugned order. In view of the decision of the Hon'ble Apex Court in the case of M/s. Apex Laboratories (supra), we find that there is nothing illegality or irregularity committed by the authorities below. We accordingly uphold the findings of the Ld. CIT(A) and decline to interfere with his findings.

6. Since the facts of the assessment year are also identical, we do not find any reason to deviate from the view taken for the earlier assessment year or to enter into any fresh debate on this aspect. Hence, while respectfully following the decision of Hon'ble Apex Court in the case of M/s Apex Laboratories Private Limited (supra) we uphold the findings of the authorities and dismiss the relevant ground.

7. The second issue relates to the levy of interest under section 220(2) of the Act and treating the assessee as in default. On this aspect, learned

AR submitted that a refund of Rs.60 crores for the assessment year 2012-13 and Rs.57 crores for the assessment year 2013-14 is pending and, therefore, the assessee cannot be treated as the assessee in default for the purpose of section 220 of the Act. Learned AR further submitted that learned Assessing Officer missed this aspect and therefore, issue needs to be restored to the learned Assessing Officer for verification on this aspect. Learned AR reports no objection and recording the same, we restore the issue to the learned Assessing Officer for necessary verification and to take a view according to law.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on this the 16th October, 2024.

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 16/10/2024
L.Rama, SPS

Copy to :

1. M/s Dr.Reddy's Laboratories Ltd., 8-2-33, Road No.3, Banjara Hills, Hyderabad
2. The Deputy Commissioner of Income Tax, Circle-8(1), Signature Towers, Kondapur, Opposite Botanical Gardens, Hyderabad
3. The Pr.CIT, Hyderabad
4. The Ld.DR, Hyderabad
5. Guard File

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ASSISTANT REGISTRAR

ITAT, HYDERABAD