

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' : NEW DELHI

BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER

ITA Nos.5425 to 5429/Del/2024
Assessment Years : 2017-18, 2018-19, 2020-21, 2021-22 & 2022-23

Assistant Commissioner of
Income Tax,
Circle-61(1),
Delhi.

(Appellant)

Vs. Remfry & Sagar,
202, Kirtideep Building,
Nangal Raya,
Delhi – 110 046.
PAN : AAEFR6753P.
(Respondent)

Appellant by : Shri K.V.S.R. Krishna and
Shri Aman Goel, CAs.
Respondent by : Ms. Monika Singh, CIT-DR.

Date of hearing : 28.05.2025
Date of pronouncement : 30.05.2025

ORDER

PER MADHUMITA ROY, JM :

These appeals by the Revenue are directed against the order of learned Commissioner of Income-tax (Appeals), NFAC, Delhi dated 22nd August, 2024 for the assessment years 2017-18, 2018-19, 2020-21, 2021-22 and 2022-23.

2. The first issue raised by the Revenue in all these appeals is relating to allowability of expenditure of license fee paid to the assessee.

3. At the time of the hearing, learned Counsel appearing for the assessee submitted before us that this issue is squarely covered by the order passed by the Hon'ble ITAT as well as confirmed by the Hon'ble Jurisdictional High Court vide judgment dated 31st January, 2025 in ITA No.199/2017 for assessment year 2009-10, copy whereof has already

been submitted before us. Such submission made by the learned AR has not been controverted by the learned DR with all her fairness.

4. We have heard the respective parties and also perused the relevant documents placed before us including the order passed by the authorities below and the order passed by the Coordinate Bench and also the order passed by the Hon'ble High Court. We find that the Hon'ble High Court in its judgment dated 31st January, 2025 (supra), while dealing with this particular aspect of the matter, has observed as follows :-

"26. We at the outset note that the disallowance which is contemplated under Section 37 is expenditure incurred for any purpose which is an offense or a purpose prohibited by law. It is thus manifest that it is principally the purpose for which the expenditure is incurred which would be decisive of whether it is liable to be disallowed. Regard must also be had to the fact that the expression "prohibited by law" is coupled to the commission of an offense. It is, therefore, apparent that the expenditure which the provision intends to be ignored and disallowed is that which may be expended for commission of an offense or like motive. We would, therefore, have to consider whether consideration parted for use of goodwill would fall within the scope of that expression as well as whether the asserted violation of the Bar Council of India Rules would have justified the disallowance.

27. We at the outset note that it is not the case of the appellants that an offense, as generally understood, was committed. According to them, a violation of the Bar Council of India rules amounted to the respondent acting in violation of a statutory prohibition and thus the expenditure liable to be disallowed.

28. We find ourselves unable to sustain that contention since, in our considered opinion, it is the principal purpose test which would be determinative of whether the expenditure was one which could have been disallowed. As noticed in the previous parts of this judgment, while examining the reach of the Explanation to Section 37, it would have to be found as a matter of fact that the expenditure was incurred for the commission of an offense as known in law or for a purpose prohibited. A breach of the Bar Council of India Rules is admittedly not classified as

an offense. That then leaves us to examine whether the purpose underlying the expenditure was for a purpose prohibited by law.

29. As was rightly contended by Mr. Vohra, the primary, nay, sole purpose for incurring expenditure towards license fee was to use the words "Remfry & Sagar" and derive benefit of the goodwill attached to it. The appellant do not dispute that Dr. Sagar had validly acquired the goodwill and that the same constituted a valuable asset which was transferable. The execution of the gift deed is also not questioned. What the appellant seeks to contend is that the gift to RSCPL was a ruse.

30. We at the outset note that the validity of the gift deed was clearly an unwarranted digression since the primary question which arose for consideration was the validity of the expenditure incurred. The solitary transaction which arose for scrutiny was the payment of license fee. We fail to appreciate how the appellants could have meandered down the path of questioning the validity of the gift or doubting the motive, purpose and intent underlying the same. Whether the same was a measure adopted for the purpose of monetizing the goodwill or a part of legacy planning were clearly not issues germane to the question whether the expenditure was liable to be disallowed. We, in this regard, also bear in consideration the undisputed fact that four unrelated parties joined the partnership and unanimously decided to make use of the goodwill and the name of the firm which had earned a considerable reputation. The appellants thus, and in our considered opinion, clearly committed an error in seeking to question the motive underlying the gift made by Dr. Sagar.

31. We then revert to the fundamental issue of whether the payment of license fee could be regarded as an expenditure incurred for a purpose prohibited by law. A payment made for use of goodwill cannot possibly be viewed as being an illegal purpose or one prohibited by law. A person would be obliged to part with consideration for the use of goodwill if it seeks to derive benefit and advantage therefrom. Undisputedly, Remfry & Sagar had acquired a reputation and goodwill in the field of legal services. What the respondent assessee thus sought to do was to derive advantage and benefit of association as also the use of a name which carried a reputation in the legal arena. The agreement to utilize and derive benefits of goodwill cannot therefore be viewed as a ruse or one aimed at tax avoidance.

32. We have already found that it was permissible for Dr. Sagar to monetise the goodwill acquired and earned. The goodwill thus represented an asset held by Dr. Sagar and which could have been validly gifted to his children. It was the resultant firm which sought to derive benefit from the goodwill attached to that name. The consideration paid for the use of the same, thus, can neither be said to be for an unlawful purpose or one motivated by the intent to overcome a prohibition raised by law.

33. Insofar as the Bar Council of India Rules are concerned, they are concerned with a sharing of revenue and fee. What those rules proscribe is the sharing of remuneration earned by a firm of lawyers with one who is not a member of the legal profession. The use of the word "sharing" in that Rule is clearly intended to deal with a situation where a lawyer intends to part with or enter into an arrangement with another to claim a part or portion of the fee that may be earned. What the said Rule envisages is an arrangement where a lawyer agrees to share the fee earned from a practise with someone who is not a lawyer. It prohibits a split, divide, dividend or equity in the revenue that may be generated by a law practise.

34. However in the facts of the present case, we find that the reference to a percentage of the revenue earned by the law practise was intended to principally provide for a basis to compute the consideration liable to be paid for use of goodwill and the utilisation of the name. The primary purpose of referring to the total billing of the law firm was to provide a firm, definite and fixed basis to compute the consideration liable to be paid for use of goodwill. The consideration so paid is thus clearly not liable to be characterised as a sharing of revenue derived from the practise but fundamentally for the exercise of the right to exploit and derive advantage from goodwill.

35. The linking of the consideration for the aforesaid purpose to the revenue earned by the firm only constituted a basis and a measure to determine the consideration that was to be paid. The arrangement was clearly not driven by a motive to share revenues earned by the legal firm. It was purely consideration paid for use of the goodwill attached to the name "Remfry & Sagar". We thus find ourselves unable to accept the argument of the appellant that the Bar Council of India Rules were violated.

36. The sheet anchor of the submissions advanced by Mr. Rai was the judgment of the Supreme Court in Apex Laboratories and where the "freebies" provided to legal practitioners was found to be an expenditure incurred for a

purpose prohibited by law. In our considered opinion, the reliance placed on Apex Laboratories is clearly misplaced since the said judgment turned upon Regulation 6.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and which clearly prohibited a medical practitioner from receiving gifts, travel expenses, hospitality as well as cash or other monetary grants. It was that prohibition in law which was found to have been violated. In view of all of the above, we find ourselves unconvinced of the challenge that stands raised in these appeals.

37. We would consequently answer the questions posed for our consideration in the negative and against the appellants. The appeals shall stand dismissed."

5. Thus, having regard to the entire aspect of the matter and considering that identical facts have already been considered by the ITAT and further confirmed by the Hon'ble Jurisdictional High Court in assessee's own case, we do not find any reason to deviate from the same and respectfully relying on the same, we find no reason to interfere with the order passed by the learned CIT(A) as impugned before us. In that result, the issue raised by the Revenue in all these appeals before us is found to be devoid of any merit and, is thus, dismissed.

6. The second issue raised by the Revenue in its appeal for assessment year 2017-18 relates to ad-hoc disallowance being 10% of the foreign travelling expenses.

7. At the time of hearing before us, learned Counsel for the assessee submitted that this issue is squarely covered by the Order of the Tribunal dated 22nd September, 2021 in ITA No.4955/Del/2018 in assessee's own for assessment year 2014-15. A copy of the said Order was placed on record. Learned DR has not controverted the submission of the learned Counsel.

8. We have heard the arguments of both the sides and perused the material placed before us including the Order of the Tribunal dated 22nd September, 2021. The Tribunal in the said Order, while dealing with the issue relating to ad-hoc disallowance being 10% of the foreign travelling expenses, has observed in paragraphs 11 to 14 as under :-

“11. AO made an ad hoc disallowance @ 10% of the foreign travel expenses claimed by the assessee on ground of personal element in these expenses which Id. CIT(A) has deleted. Ld. DR for the Revenue challenging the impugned deletion relied upon the order passed by the AO.

12. We are of the considered view that none of the expenditure claimed by the assessee as business expenditure can be disallowed merely on the basis of surmises. Ld. CIT(A) deleted the impugned addition by following the earlier years order allowing identical expenditure.

13. When AO has not disputed the books of account qua the expenditure claimed by the assessee in any manner, ad hoc disallowance to the extent of 10% of the foreign travel expenses is not sustainable in the eyes of law. So, we find no ground to interfere in the findings returned by the Id. CIT(A), hence ground no.3 is determined against the Revenue.

14. Resultantly, finding no illegality or infirmity in the order passed by the Id.CIT(A), present appeal filed by the Revenue is hereby dismissed.”

9. Having regard to the entire aspect of the matter and considering that identical issue has already been considered by the ITAT in assessee's own case, we do not find any reason to deviate from the same and, respectfully relying on the same, we find no reason to interfere with the order passed by the learned CIT(A) as impugned before us. This ground of the Revenue's appeal is, therefore, dismissed.

10. As regards the remaining issue raised by the Revenue in assessment year 2018-19 relating to the claim of TDS credit, it is observed that learned CIT(A), while dealing with this issue, has clearly

held that since the corresponding income has already been offered to tax by the assessee and also assessed by the Assessing Officer in this assessment year, the assessee was entitled to TDS credit in terms of Rule 37BA(3) of the Income-tax Rules, 1962 read with Section 199 of the Act. We find no infirmity in the finding of the learned CIT(A) and, while upholding the same, we dismiss this ground of the Revenue's appeal.

11. In the result, all the appeals of the Revenue are dismissed.
Decision pronounced in the open Court on 30th May, 2025.

Sd/-

(KHETTRA MOHAN ROY)
ACCOUNTANT MEMBER

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

VK.

Copy forwarded to: -

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

Assistant Registrar