

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

[Coram: Justice P P Bhatt, President and Pramod Kumar Vice President]

ITA No.: 1800/Ahd/15
Assessment year: 2003-04

**Deputy Commissioner of Income Tax
Circle 3(3), Ahmedabad**

.....Appellant

Vs

Core Healthcare Limited
*Nirma House, Ashram Road
Ahmedabad 380 009 [PAN: AAACC6252H]*

.....Respondent

CO No. 68/Ahd/2017
In ITA No.: 1800/Ahd/15
Assessment year: 2003-04

Core Healthcare Limited
*Nirma House, Ashram Road
Ahmedabad 380 009 [PAN: AAACC6252H]*

.....Cross objector

Vs.

**Deputy Commissioner of Income Tax
Circle 3(3), Ahmedabad**

.....Respondent

ITA No.: 1409/Ahd/15
Assessment year: 2003-04

Core Healthcare Limited
*Nirma House, Ashram Road
Ahmedabad 380 009 [PAN: AAACC6252H]*

.....Appellant

Vs.

**Deputy Commissioner of Income Tax
Circle 3(3), Ahmedabad**

.....Respondent

Appearances by

S N Soparkar along with **Himanshu Shah**, for the assessee
Subhash Bains for the revenue

Date of concluding the hearing : December 6, 2018
Date of pronouncement : March 4, 2019

O R D E R

1. We will first take up the appeal filed by the Assessing Officer.
2. This appeal challenges correctness of the order dated 16th March 2015 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, for the assessment year 2003-04.
3. In ground no. 1, the Assessing Officer has raised the following grievance:

The CIT(A) has erred in law and on facts in deleting the addition of Rs 21,98,50,000 on account of disallowance of interest expenditure which was admittedly a provision and not covered by the decision of Hon'ble Supreme Court in the case of CIT Vs Core Healthcare Ltd [(2008) 298 ITR 194 (SC)].

4. During the course of reopened scrutiny assessment proceedings, the Assessing Officer noted that the assessee has claimed a deduction of Rs 21,98,50,000 and, in a note to the computation of taxable income, stated that the provision for interest liability of Rs 21,98,50,000 which has accrued but not provided for, is deductible under section 36(1)(iii) as no part of this interest is covered by Section 43B of the Act. The deduction was thus claimed. On these facts, the Assessing Officer concluded that "the assessee has thus capitalized the expenses in the books of accounts but the same has been claimed as revenue expenditure in the statement furnished alongwith the return of income". The Assessing Officer rejected the claim by observing that "firstly, admittedly it is a provision and secondly it is not provided in the books of accounts". Aggrieved by the disallowance so made, assessee carried the matter in appeal before the CIT(A) who granted the relief by following a direct decision dated 5th June 2009 of a coordinate bench of this Tribunal, in assessee's own case for the assessment years 1998-99 to 2002-03. The Assessing Officer is not satisfied and is in appeal before us.
5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.
6. We find that there is no dispute that the material facts and circumstances of this assessment year, vis-à-vis the assessment years 1998-99 to 2002-03, are materially similar. The relief on this issue was given by the coordinate bench, but no specific grievance raised by the Assessing Officer against the Tribunal order, on that aspect, before Hon'ble High Court. We further find that earlier decision dated 5th June 2009 passed by the coordinate bench was carried in appeal before Hon'ble jurisdictional High Court on another aspect, and, Their Lordships, vide judgment dated 26th July 2016, were pleased to confirm the decision of the Tribunal. The relief granted by the coordinate bench, on this particular aspect, however reached finality because of the Assessing Officer not challenging the Tribunal findings on that aspect before Hon'ble Court above. In the case of Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 2191, Hon'ble Supreme Court had an occasion to consider whether it is open to revenue to accept a judgment in the case of one assessee, and appeal, against the

identical judgment in the case of another. Their Lordships held that such a differential treatment on the same set of facts was not permissible in law, and observed that, "it is not open to revenue to accept the judgment in the case of the assessee in that case and challenge its correctness in the case of another assessee, without just cause." The same view was reiterated by the Hon'ble Supreme Court in the case of *Berger Paints India Ltd. v. CIT* [2004] 266 ITR 992, and followed by the Hon'ble Delhi High Court in the cases of *CWT v. R.K.K.R. International (P.) Ltd.* [2005] 198 CTR 567 and *CIT v. Neo Poly Pack Pvt. Ltd.* [2000] 245 ITR 492. When such are the views of Hon'ble Courts above, it is beyond any doubt or controversy that the revenue authorities cannot even challenge the relief granted by an appellate authority in one assessment year, when, on the same issue, it has accepted the relief granted by the appellate authority in another assessment year. Be that as it may, the issue in appeal is covered, in favour of the assessee, by an decision of the coordinate bench. In this view of the matter, respectfully following the coordinate bench decision and having regard to the fact that the learned Departmental Representative has not pointed out any reasons whatsoever as to why the coordinate bench decision will not apply on this assessment year as well, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter. No interference is called for.

7. Ground no. 1 is thus dismissed.

8. In ground no. 2, the Assessing Officer has raised the following grievance:

The CIT(A) has erred in law and on facts with respect to the addition of Rs 4,84,19,370 on account of interest free loans and advances to sister concerns in directing to verify the claim of actual interest expenses of the assessee and not considering that addition of only 3% of the total interest expenditure which was attributable to interest free advances to sister concern.

The CIT(A) has erred in law in giving the above direction when actually the assessee did not discharge the onus of showing the nexus of interest free advances and loan with interest free funds.

9. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has advanced loans of Rs 52,32,92,352 to a subsidiary company by the name of Span Medicals Ltd. When he probed the matter further, it was explained by the assessee that Span Medicals was a virtually defunct company and there was no commercial sense in providing for interest on this outstanding amount. It was also explained that the loan was originally given for sound commercial reasons, and that, in any event, interest free funds available to the assessee were far in excess of the this interest free advance- the share capital and reserve and surplus itself exceeding Rs 345 crores. It was also explained that the borrowings by the assessee were used for its own business purposes, and that no part of these borrowings were used in advancing this interest free advance. None of these submissions, however, impressed the Assessing Officer. He was of the view that the assessee could have saved its huge interest burden only if the assessee had charged interest on interest free advance to its subsidiary. The Assessing Officer further noted that the ratio of this advance to the total borrowings is 3%. The Assessing Officer thus proceeded to disallow 3% of total interest paid by the assessee, which worked out to Rs 4,84,19,370. Aggrieved by the

disallowance so made, assessee carried the matter in appeal before the CIT(A) who granted the relief by following a direct decision dated 5th June 2009 of a coordinate bench of this Tribunal, in assessee's own case for the assessment years 1998-99 to 2002-03. The Assessing Officer is not satisfied and is in appeal before us.

10. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We find that there is no dispute that the material facts and circumstances of this assessment year, vis-à-vis the assessment years 1998-99 to 2002-03, are materially similar. The relief on this issue was given by the coordinate bench was challenged by the Assessing Officer before Hon'ble High Court. We further find that earlier decision dated 5th June 2009 passed by the coordinate bench was carried in appeal before Hon'ble jurisdictional High Court on this issue, and, Their Lordships, vide judgment dated 26th July 2016, were pleased to confirm the decision of the Tribunal on the same. In this view of the matter, respectfully following the Hon'ble jurisdictional High Court's judgment on the issue and having regard to the fact that the learned Departmental Representative has not pointed out any reasons whatsoever as to why the coordinate bench decision will not apply on this assessment year as well, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter. No interference is called for.

11. Ground no. 2 is thus dismissed.

12. The only other ground of appeal raised by the Assessing Officer is as follows:

The CIT(A) has erred in law and on facts in deleting the addition of Rs 1,32,000 made under section 37 of the Act, and not considering that the payments were made for the kickbacks and not incurred for business purposes.

13. So far as this disallowance is concerned, the relevant material facts are as follows. During the course of the assessment proceedings, the Assessing Officer noticed that the assessee had paid Rs 1,32,000 to Delhi base agent by the name of True Bell International for fees and expenses to be incurred for registration of assessee's products in Iraq. There was another payment of US \$ 2,447 for After Sales Service Fees paid to Iraqi entities, which for the detailed reasons set out in the assessment order, was found to be of the nature of kickbacks but finally, in computation of income, no disallowance was made in respect of the same. The disallowance was made only for Rs 1,32,000 being the registration charges. Be that as it may, the CIT(A) deleted the said disallowance of Rs 1,32,000. The Assessing Officer is aggrieved and is in appeal before us.

14. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

15. We find that the fees paid to a Delhi based agent for registration of products in Iraq, by no stretch of imagination, can be said to be a payment of kickbacks to Iraqi regime. The erudite discussion in the assessment order, about the Volker Committee report and the kickbacks to Iraqi regime by those doing business with Iraq in the sanction days, has nothing to do with this disallowance. We find that the payment is made for a legitimate purposes and

there is no bar under section 37 on its deductibility. We, therefore, approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter on this aspect as well.

16. Third and final ground of appeal in the Assessing Officer's appeal is also dismissed.

17. The appeal filed by the Assessing Officer is thus dismissed.

18. The appeal filed by the assessee and the cross objections were not pressed before us. These are thus dismissed for want of prosecution.

19. In the result, both the appeals, as also the cross objections, are dismissed. Pronounced in the open court today on the 4th day of March, 2019.

Sd/-

Sd/-

Justice P P Bhatt
(President)

Pramod Kumar
(Vice President)

Ahmedabad, dated the 4th day of March, 2019

<i>Copies to:</i>	(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
	(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
	(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order etc

True Copy

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad