

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA Nos.2996 & 2997/Chny/2017
(निर्धारण वर्ष / **Assessment Years: 2013-14 & 2014-15**)

DCIT Corporate Circle -4(1) Chennai.	बनाम/ Vs.	M/s. Medi Sales India Pvt Ltd No. 44, Permabur High Road, Jamaliya, Chennai – 600 012.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCM-3698-M		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

CO Nos.37 & 38/Chny/2018
(Arising out of ITA Nos.2996 & 2997/Chny/2017)
निर्धारण वर्ष / **Assessment Years: 2013-14 & 2014-15**)

M/s. Medi Sales India Pvt Ltd No. 44, Permabur High Road, Jamaliya, Chennai – 600 012.	बनाम/ Vs.	DCIT Corporate Circle -4(1) Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACCM-3698-M		
(पीलार्थी/ Cross Objector)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri T. Vasudevan (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	22-02-2022
घोषणा की तारीख / Date of Pronouncement	:	13-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The revenue is in further appeal for Assessment Years (AY) 2013-14 & 2014-15 whereas the assessee has filed cross-objections for both the years. The impugned order is common order dated 27.09.2017 passed by learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)]. The assessment for both the years have been framed u/s 143(3) vide separate orders. The facts as well as issues in both the years are substantially the same and therefore, adjudication in any one year shall apply to the other years also. The registry has noted a delay of 6 days in assessee's cross-objections, the condonation of which has been sought by the assessee on the strength of condonation petition as accompanied by an affidavit. Though Ld. DR opposed condonation, however, keeping in view the period of delay, we condone the delay and admit cross-objections for adjudication on merits.

2. The grounds raised by the revenue in AY 2013-14 read as under: -

The order of the Ld. CIT(A) is contrary to law and facts of the case.

The Ld. CIT(A) erred in deleting the disallowance made by the AO of Rs.1,35,00,256/- and the addition made by the AO of Rs. 48,45,954/- u/s. 37(1) of the Income Tax Act, 1961.

The Ld. CIT(A) erred in allowing assessee's claim holding that the CBDT Circular No. 5/2012 dated 01.08.2012 applies only to pharmaceutical manufacturers and not to distributors like the assessee.

The Ld. CIT(A) failed to give any categorical finding with respect to the persons to whom the assessee has given the freebies.

3. The grounds of cross-objections in AY 2013-14 read as under: -

1. The order of the Commissioner of income Tax(Appeals) in so far as it is against the assessee is contrary to law, erroneous and unsustainable on the facts of the case.

2. The CIT(A) erred in confirming the disallowance of 10% of the business promotion expenses debited in the books, attributing the same to be on personal account, merely on presumptuous basis.

3. The CIT(A) considering the reasonable of the business promotions expenses incurred at about 1% of the turnover, ought to have allowed the entire amount debited as business expenditure.

4. The CIT(A) while adjudicating that the amounts were expended on gifts and promotion materials to other distributors and wholesalers down the line to enable marketing of the products in the highly competitive pharma industry and seen in this light, the total amount expended on business promotion was reasonable and needs to be allowed entirely.

5. The CIT(A) had rightly deleted the addition of Rs.48,45,954 received back from main suppliers as reimbursements, which was not claimed as expenditure by assessee and hence the deletion of the amount needs to be confirmed.

6. The CIT(A), in any event, having held that the CBDT Circular restricts giving gifts and freebies to Doctors and not to expenses incurred on business promotion by pharma distributors to other distributors and wholesalers and hence ought to have allowed the entire amount of claim as business expenditure in the hands of assessee.

4. Having heard rival submissions and after going through facts on record, our adjudication would be as under.

Assessment Proceedings

5.1 The assessee being resident corporate assessee is stated to be engaged as pharmaceutical distributors. The sole subject matter of appeal / cross-objection is disallowance of Business Promotion Expenses. The assessee claimed sales and distribution expenses for Rs.86.54 Lacs which were stated to be incurred on purchase of jewellery, textile clothes, cameras, I-pad, hotel rooms rent etc. The assessee explained that it has purchased gold coins and other gold items and distributed to distributors for promotion of business. In support, the assessee produced purchase bills together with ledger account. Upon perusal of the same, it was noted that the assessee purchased gold bar, digital cameras, gold ornaments, bed spreads, shirts, pens etc. Some amount was paid to tour and travel agency for air travel.

5.2 The Ld. AO opined that the expenditure appeared to be personal in nature and not allowable particularly in view of CBDT Circular No.5/2012 dated 01/08/2012 which prohibit deduction of such freebies distributed

by pharmaceutical and allied health sectors. Further Indian Medical Council (Professional conduct, etiquette and ethics) Regulations 2002 dated 10.12.2009 prohibits distribution of medical freebies and therefore, the deduction of the same would not be available to the assessee. The Ld. AO also alleged that there was not enough evidence to support the fact that the items were utilized for business purposes only. The theory that the gifts were distributed to distributors was not believable and practicable.

5.3 The assessee incurred aggregate expenditure of Rs.135 Lacs out of which Rs.48.45 Lacs were reimbursed by main suppliers and thus net expenditure of Rs.86.54 Lacs was claimed by the assessee in the Profit & Loss Account. The Ld. AO disallowed expenditure of Rs.135 Lacs and treated the reimbursement of Rs.48.45 Lacs as 'other income'.

Appellate Proceedings

6. During appellate proceedings, it was submitted by the assessee that no gifts were given to any doctors or hospitals and the same were given as gifts to wholesale dealers and small distributors only. In the line of business of generic medicine (in which assessee was dealing), the profit margins were low. In order to survive, promotional expenses were to be incurred and the same were less than 1% of assessee's turnover. The stated CBDT circular would not apply to the assessee since no gifts were distributed to doctors. The entire set of ledgers was produced along with vouchers during assessment proceedings and the allegation of Ld. AO that the gifts were given to doctors and physicians was erroneous assumption. Without doing any cross-examination or investigation, Ld. AO disallowed the expenditure which was not justified.

7. The Ld. CIT(A) concurred with assessee's submission and observed that the assessee reflected good profit margin on turnover of Rs.85.03 Crores. To achieve the turnover, the assessee incurred business promotion expenses in the shape of gift items and other articles which were distributed to pharmaceutical retailers as well as host of trade representatives. The Ld. AO misunderstood that the gifts were given to doctors and other medical professionals which was not the case. Rather the assessee was merely a trader and a distributor. The CBDT Circular would apply only to pharmaceutical companies and not to distributors like assessee. There was no evidence on record to establish that the expenses were incurred towards doctors and other medical professionals. The assessee was well within his business expediency and requirement to incur business promotion expenses with respect to retailers and trade representatives. Such legitimate business expenditure was norm while conducting the business. However, considering the nature of expenditure, personal element could not be ruled out and therefore, 10% of net expenditure was to be disallowed and the balance addition was to be deleted. Similar was the adjudication for AY 2014-15 which has given rise to revenue's appeal and assessee's cross-objections before us.

Our findings and Adjudication

8. Upon careful consideration of material facts, it could be gathered that the assessee merely acts as a trader and distributor of generic medicines. It sells goods to traders and small distributors and to incentivize the chain, it offers gifts which are in the shape of gold items and novelties. There is no evidence on record that the assessee was

giving such gifts to doctors and medical professionals. The Ld.AO has made the allegations without proving this fact. No investigation whatsoever has been carried out to support the same. In such a case, CBDT circular would have no applicability to the case of the assessee. As noted in the impugned order, the business promotion expenses as incurred by the assessee were a normal business practice and net expenditure was merely 1% of total turnover of the assessee. The assessee has already produced invoices, vouchers and ledgers extracts to support the expenditure. At the same time, considering the nature of expenditure, personal element could not be ruled out. Therefore, on the given facts and circumstances, we are of the considered opinion that Ld. CIT(A) has clinched the issue in correct perspective. However, the estimation of 10% as made by Ld. CIT(A), in our opinion, was on the higher side considering the fact that the assessee had produced all the relevant documentary evidences, invoices and ledger extracts etc. and no defect could be pointed out by Ld. AO in the same. Therefore, we direct Ld. AO restrict the disallowance to 5% of net expenditure instead of 10% as upheld by Ld. CIT(A) in the impugned order. The same estimation would apply to both the years. We order so. The grounds raised in revenue's appeals, for both the years, stands dismissed whereas the corresponding grounds of assessee's cross-objections stands partly allowed. The other grounds in assessee's cross-objections are merely in support of impugned order and therefore, the same has been rendered infructuous. The revenue's appeal for AY 2013-14 stands dismissed. The assessee's cross-objections, for both the years, stands partly allowed.

9. The remaining issue in revenue's appeal for AY 2014-15 is disallowance of commission expenditure. The assessee paid commission of Rs.116.27 Lacs to 13 parties which remained unconfirmed by the payees and therefore the same were added back to assessee's income. This was despite the fact that the assessee, during assessment proceedings, had furnished complete details viz. name, address, PAN of payees, details of TDS and payment details etc. All the payments were made through cheques / banking channels. The Ld. CIT(A), noticing the above evidences, observed that the recipients were regular commission agents. Merely because the confirmatory letters were returned back, there was no other ground to disallow legitimate and verifiable business expenditure. Therefore, the additions were deleted. Aggrieved, the revenue is in further appeal before us.

10. After going through factual matrix, we find that the assessee had furnished complete details viz. name, address, PAN of payees, details of TDS and payment details etc. All the payments were made through cheques / banking channels. All the recipients were regular commission agents of the assessee. Therefore, except for the fact that the confirmatory letters were returned back, there was no other ground to disallow legitimate and verifiable business expenditure. These findings of Ld. CIT(A) could not be held to be perverse. Finding no error in the impugned order, on this issue, we dismiss the grounds raised by the revenue.

Conclusion

11. Both the appeals of the revenue stand dismissed whereas both the cross-objections filed by the assessee stand partly allowed in terms of our above order.

Order pronounced on 13th May, 2022.

**Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT**

**Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 13-05-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A) 4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF