IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.3.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.723 of 2018

Apex Laboratories P Ltd.,
SIDCO Garments Complex,
III Floor, Guindy,
Chennai 600 032.
PAN: AACA5174G ... Appellant

Vs.

The Deputy Commissioner of Income Tax
Large Tax Payer Unit-II,
1775, Jawaharlal Nehru Inner Ring Road,
Chennai 600 101. ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 29.1.2018 made in ITA No.1153/Mds/2014 against the order dated 29.01.2014 made in I.T.A.No. 10/13-14/LTU(A) on the file of the Commissioner of Income Tax (appeals)Large Rax Payer Unit, Chennai for the Assessment year 2010-2011.

against the order dated 21.03.2013 made in G.I.No/PAN AAACA5174G on the file of the Deputy Commissioner of Income Tax, Large Tax Payer Unit, Chennai for the assessment year 2010-2011.

For Appellant : Mr.R.Vijayaraghavan, for
M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.Ravikumar
Senior Standing Counsel

J U D G M E N T
(Delivered by DR.VINEET KOTHARI,J)

Heard the learned counsels for the parties.

2. The Assessee has filed the present appeal under Section 260A of the Act raising the following purported substantial questions of law arising from the order of the learned Appellate Tribunal dated 29.1.2019 filed by both Assessee and the Revenue:-

"i) Whether the Tribunal was right in law in holding that the expenditure incurred by the assessee which has resulted in the violation of the Amendment to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 under the Medical Council Act, 1956, is not an allowable expenditure and hit by the Explanation to Section 37(1) of the Act?

ii) Whether the Tribunal was right in law in holding that the expenditure incurred towards 'sales promotion expenses' and 'other selling expenses' by providing gifts and freebies to Doctors and Medical Practitioners is prohibited by the Indian Medical Council (Professional Conduct, Etiquette and Ethics) (Amendment) Regulations 2009 and hence not an allowable deduction under Section 37(1) of the Act?

iii) Whether the Tribunal was right in law in not appreciating that these expenses are purely for advertising and creating awareness of "Healthcare Supplement-Zincovit" manufactured by appellant which is outside the purview of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 and hence not hit by the Explanation to Section 37(1) of the Act?

iv) Whether the Tribunal was right in law in not appreciating that the Appellant is not bound by the regulatory codes of the Indian Medical Council nor has an obligation to comply with those regulations which are binding only on doctors/medical practitioners and professional associations in view of the undertaking given by the Medical Council of India before the Hon'ble Delhi High Court in the case of Max Hospital, Pitampura vs. Medical Council of India in W.P. (C) No.1334 of 2013 dated 10.1.2014 that the 2002 Regulations has jurisdiction limited to taking action only against the registered medical practitioners?

v) Without prejudice the Tribunal erred in law in not appreciating that in view of the CBDT Circular No.5/2012, dated 1st August 2012 providing for disallowance of expenditure under Section 37(1) of the Act in respect of freebies provided to doctors, no disallowance can be made for the current assessment year?"

2. The learned Tribunal disallowed the expenditure incurred for the alleged Sales Promotion expenses contrary to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 promulgated by the Government of India. The Assessee had incurred certain expenditure for distributing gifts

and freebies to the Doctors/Medical Practitioners. It was found that acceptance of such freebies and gifts by the Doctors/Medical Practitioners were prohibited by the said Regulations and therefore, the expenditure was found to be of illegal nature. The first Appellate Authority and the Tribunal disallowed the same after the Amendment in the Regulations were notified. The findings of the learned Tribunal in this regard are quoted below for ready reference:-

> "8. A perusal of the decision of Co-ordinate Bench of this Tribunal in the assessee's own case as also the decision of the Hon'ble Himachal Pradesh High Court clearly shows that the basic intention of the decision was that the receiving of the gifts/freebies by Professionals is against public policy as also against the law in so far as the amendment by the Medical Council Act, 1956 to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, once receiving of such gifts have been held to be unethical obviously the corollary to this would also be unethical, being giving of such gifts or doing such acts to induce such Doctors and Medical Professionals to violate the Medical Council Act, 1956. Consequently, we are of the view that the expenditure incurred by the assessee which has resulted in the violation of the amendment to the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 under the Medical Council Act, 1956, is not an allowable expenditure and hit by the explanation to Section 37(1) of the Act.
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> 9. Now, coming to the issue as to whether the same is operative prospectively or retrospectively or as to whether the said amendment is clarificatory in nature. A perusal of the said amendment notification dated 10.12.2009 under Clause-1(ii) specifies that it shall come into force from the date of their publication in the Official Gazette. The said amendment came to be published in the Official Gazette on 14.12.2009. Consequently, the said amendment cannot be treated as operating retrospectively nor can it be treated as clarificatory in nature, clearly the said amendment is prospective in nature and operative from 14.12.2009. A perusal of the decision of the learned CIT(A) clearly shows that the learned CIT(A) has granted the assessee the benefit of the expenditure till 14.12.2009 and has restricted the disallowance by invoking the

explanation to Section 37(1) of the Act for the period from 14.12.2009. This being so, we find no error in the findings of the learned CIT(A) which calls for any interference.

10. In the result, the appeal filed by the assessee and the appeal filed by the Revenue stand dismissed."

3. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations were amended with effect from 14.12.2009 and therefore, the expenditure incurred after 14.12.2009 to 31.3.2010 for relevant Assessment Year 2010-2011 was disallowed.

4. Having heard the learned counsel appearing for the Appellant/Assessee and the learned Senior Standing Counsel for the Revenue, we find that no substantial question of law arises for our consideration in the present case as the findings of facts of the Appellate Authority below are based on relevant Regulations and Amendment thereafter and the expenditure on such items prior to the Amendment have already been allowed in favour of the Assessee and they have been disallowed after 14.12.2009. We find no error in the order passed by the Tribunal. Therefore, the Appeal is devoid of merit and the same is liable to be dismissed and accordingly, it is dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssk.

To

1. The Deputy Commissioner of Income Tax
Large Tax Payer Unit-II,
1775, Jawaharlal Nehru Inner Ring Road,
Chennai 600 101.

2. Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai.

3. The Commissioner of Income Tax (Appeal)
Large Tax Payer Unit, Chennai.

+1 CC to Mr.T.Ravikumar, Advocate sr 24975.
+1 CC to M/s.Subbaraya Aiyar Padmanabhan, Advocate sr 25935

T.C.A. No.723 of 2018

SP(13/05/2019)