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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 751/2025 CM APPL. 79274/2025

PR. COMMISSIONER OF INCOME TAX-1 .....Appellant

Through: Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon, Mr. Rahul Singh, JScs and Mr. Gaurav Kumar and Mr. Siddharth Burman, Advs. for Revenue

versus

APL APOLLO TUBES LTD .....Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

O R D E R

% 16.12.2025

1. This appeal lays a challenge to an order dated 30.07.2021 passed by the Income Tax Appellant Tribunal (ITAT) deciding two appeals, which includes ITA 9395/Del/2019 relatable to the assessment year 2014-2015, which is primarily an appeal filed by the respondent/assessee herein.

2. The assessee has filed the appeal i.e. ITA 9395/Del/2017 on the following grounds:-

"A. Because the Ld. ITAT has passed the impugned Order completely devoid of any reasons and in

complete disregard to facts and circumstances of the present case and failed to appreciate the correct position of law applicable at the time of passing of the Assessment Order.

B. Because the Hon'ble ITAT failed in giving any conclusive remarks on the aspect of genuineness of the transactions related to brand image and it erroneously decided the issue in favor of the assessee by holding that it is beyond the purview of the Revenue to hold the expense under consideration as unreasonable and excessive.

C. Because the Ld. ITAT erred in disregarding the statutory bar under Section 40A(2)(a), which clearly permits the AO to disallow unreasonable and excessive expenditure where benefit to business was not proved and where identity and performance of beneficiaries remained unverified.

D. Because the Ld. ITAT erred in ignoring the fact that the provisions of Section 40A(2)(a) clearly states that where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person, and the Assessing Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable, shall not be allowed as a deduction.

E. Because the Hon'ble ITAT failed to appreciate the finding of the CIT(A) where the it has given a finding that the alleged Brand Image expenses did not pertain to the assessment year in question. The relevant portion of the CIT(A) is reproduced herein as follows:

"6.3.4. ………….it is observed that the appellant company has distributed 891 tickets. The appellant company did not disclose as to how the tickets were

distributed. The appellant company has given only the front page of the scheme which reads as under "APOLLO Tubes for every reason Experience Asia 4 Nights and 5 Days Trip - Retailer Scheme 1st October 2013 to 31s' May 2014 Scheme valid only for Andhra Pradesh and Telengana Retailers". On perusal of details, it is found that most of the parties belong to (i) Haldwani, (ii) New Delhi, (Hi) Mehsana, (iv) Mumbai, (v) Agra, (vi) Bangalore, (vii) Moradabad, (viii) Ghaziabad, (ix) Kochi, (x) Ahmedabad, (xi) Akola, (xii) Trissur, (xiii) Aligarh, (xiv) Ludhiana, (xv) Dehradun, (xvi) Noida etc. Most of the parties do not qualify for the tickets as they do not belong to Andhra Pradesh and Telengana. As regards Gold Khazana Scheme, it is observed from the brochure that the APL Apollo Gold Khazana Scheme' (The Scheme) is a sales promotion Scheme of APL Apollo Tubes Limited and the Scheme was applicable for the period 1st November 2012 to 31st March 2013 (both days included). Gold Khazana Scheme was not applicable for AY 2014-15"

3. The appeal primarily is in respect of Brand Image Expenses. The Tribunal dealt with the said issue in paragraphs 18 to 22 in the following manner:-

"18. The AO has computed the breakup of Brand Image expenses as under:-

S. No.	*Expenditure Incurred (Nature)*	*Amount (Rs.)*
1.	*Singapore Star Cruise Trips (Dealers & Distributors) of 100 Persons*	*8,81,98,856.00*
2.	*Tour and Travel Package for Dealers and Distributors under various Schemes*	*80,18,675.00*
3.	*Sales Promotion Scheme for Dealers Meet*	*51,87,439.00*

	Expenses	
4.	*Marketing Tour & Travel, Salary of Marketing Department (Branding), Printing and Designing of Flex Boards, Wall Painting, T-Shirts and other Gifts*	*3,86,52,965.00*
	Total	*14,00,57,935/-*

19. Out of the amount of Rs.14,00,57,935/-, an amount of Rs.5,21,71,634/- was debited to Brand Image expenses in the P&L account and Rs.8,73,86,300/- in the computation of income.

20. The AO disallowed an amount of Rs.8,73,86,301/- claimed in the computation of income on the grounds that the assessee failed to prove the following points:

(i) to whom the freebies gifts had been distributed?

(ii) what advantage that person had given to the company objectively?

(iii) whether without distribution of gifts, foreign junkets the sale of the appellant company would have dipped?

(iv) who had travel led, what is the relationship of the person travel led to the appellant company, whether the employee of the company, or the distributors of the company or their family members had travel led?

(v) whether the benefit value had been affected to income by that person who had been given the freebies/s, free tour?

(vi) whether there is substantial increase in net profit of company?

(vii) for which purpose the Jewellery of Rs. 1,34,85,975/- was purchased, to whom distributed, their names and receipts.

21. The ld. CIT (A) confirmed the addition holding that the assessee company claimed expenses of Rs. 8,73,86,301/- is unreasonable and excessive and has been claimed in order to reduce its taxable income for *the assessment year 2014-15. The ld. CIT(A) held that the APL gold khazana scheme do not relate to the current assessment year 2014-15.*

22. From the facts on record, we find that gold of 5000 gm worth Rs.1,34,85,900/- has been purchased on 01.04.2013, 22.04.2013, 21.12.2013 pertaining to the assessment year 2014-15. The gold has been purchased from GR Tangamaligai Jewellers Pvt. Ltd. which has not been disputed by the revenue. The list of gold distribution has been given at page no. 15 of the order of the ld. CIT (A) mentioning the sales volume inmetric tonnes and the quantity of gold in grams given as incentive. The revenue ought to have enquired whether the incentive of gold varying from 1073 to 1500 gms has indeed been bestowed as incentive, if so, what is the treatment given in the hands of recipient's books of accounts. The assessee has provided details of al l the dealers who have been given tickets to cruise trips which were not inquired by the revenue to prove any deformation in the information provided. Instead of doing so, the revenue held that the expenses of Rs.8.73 crores are unreasonable and excessive which is beyond the purview of the revenue. Since, the fact of incurring of expenses and its genuineness has not been in dispute, we hereby decline to accept the reasoning of the ld. CIT (A)."

4. In paragraph 22, the Tribunal gives a finding of fact that the gold of 5000 grams worth Rs. 1,34,85,900/- was purchased on 01.04.2013, 22.04.2013 and 21.12.2013, that is during the assessment year 2014-2015.

5. The fact that the gold was purchased from G.R. Tangamaligai Jewellers Private Limited; has not been disputed by the appellant/revenue. The Tribunal also notes that the list of gold distribution has been given at page no.15 of the order of Commissioner of Income Tax (Appeals) mentioning the sales volume in metric tonnes and quantity of gold in grams

given as incentive.

6. The Tribunal was of the view that the revenue ought to have enquired whether the incentive of gold varying from 1073 to 1500 grams was indeed been bestowed as incentives; if so, what is the treatment given in the hands of recipients books of account.

7. The Tribunal on the other aspect, that is giving tickets to cruise trips as an incentive, was of the view that despite the details thereof were provided by the assessee in respect of all the dealers; the same were not enquired by the revenue to prove any disinformation. Instead of doing so, the revenue held that the expenses of Rs. 8.73 crores as unreasonable. This according to the Tribunal is beyond the purview of the revenue.

8. It finally concluded that the incurring of expenses and its genuineness has not been in dispute, thereby it declined to accept the reasoning of the CIT (A). In other words, the ITAT accepted the stand set up by the respondent/assessee on the expenses incurred under the incentive scheme.

9. The issue is purely a question of fact. This, we say so from the proposed substantial question and the grounds, taken by the appellant/revenue in the appeal. It is not the case of the appellant/revenue that the findings arrived at by the ITAT are perverse.

10. In any case, the same cannot be the case of the revenue when there is no dispute insofar as the documents provided by the assessee in respect of gold coins as incentive and also providing tickets for cruise trips to the distributors.

11. In the given facts as no substantial question of law arises for consideration, we are of the view that the appeal is bereft of merit and the same is liable to be dismissed. We order accordingly.

12. Additionally, we are of the view that the appeal must be dismissed on the ground of delay of 1376 days in re-filing the appeal.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 16, 2025

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