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

- + ITA 273/2026 CM APPL. 20820/2026
- + ITA 274/2026 CM APPL. 20824/2026
- + ITA 275/2026 CM APPL. 20829/2026
- + ITA 276/2026 CM APPL. 20830/2026
- + ITA 285/2026 CM APPL. 21113/2026

PR. COMMISSIONER OF INCOME TAX 12Appellant

Through: Mr. Indruj Singh Rai, SSC, Mr. Sanjeev Menon and Mr. Rahul Singh, JSCs and Mr. Gaurav Kumar, Adv.

versus

M/S REMFRY AND SAGAR & ANR.Respondents

Through: Mr. Aditya Vohra and Mr. Tanmay Dhakras, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **02.04.2026**

1. The primary issue in all these appeals is as to whether the amount of goodwill which the respondent-firm had paid to a company M/s Remfry and Sagar Consultants Private Limited, is an expenditure allowable under Section 37 of the Income Tax Act, 1961.
2. Mr. Indruj Singh Rai, learned Senior Standing Counsel for the appellant-Income Tax Department argued that any payment made to a person other than the member of the profession is barred by law under the Bar Counsel of India Rules and the Advocate Act, 1961. Because such payment amounts to sharing of the profits and hence it cannot be considered



an expense or even if taken to be an expense, it is an illegal expense.

3. Mr. Aditya Vohra, learned counsel for the assessee at the outset submitted that this very issue has been decided against the Department by a coordinate Bench of this Court vide a judgment dated 31.01.2025 titled as **PCIT v. M/s Remfry & Sagar** in ITA 199/2017, NC: 2025:DHC:563-DB and other connected matters for the Assessment Years (AYs) 2009-10 and 2011-12. He added that for more than sixteen years (since AY 2003-04 onwards), such practice is being uniformly followed by the respondent-firm and the same has either been accepted by the Assessing officer (AO) or has been affirmed by the Income Tax Appellate Tribunal (*hereinafter referred to as 'the Tribunal'*).

4. Heard.

5. The relevant part of the judgments dated 31.01.2025 in **Remfry & Sagar** (Supra) is reproduced hereinfra :

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 monetising 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 utilise 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.

6. The other issue which is involved in ITA 274/2026 is as to whether the proportionate foreign travel expenses which the AO had disallowed has been justifiably allowed by the Tribunal.

7. So far as the question relating to disallowance of proportionate foreign travel expenses is concerned, the same is essentially based on appreciation of evidence and amount to finding of facts, the same hardly gives rise to any question of law, much less substantial question of law.

8. With regard to the first issue, maybe there is a scope of argument, but since the same has been decided against the Department by a judgment of this Court dated 31.01.2025 in ITA 199/2017, we follow the same in order to maintain the consistency.

9. All these appeals, therefore, fail.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 2, 2026/ss