

Free air travels & hotel stay expenses to doctors for prescribing medicines of pharma-co. aren't deductible u/s 37

Summary – The Delhi ITAT in a recent case of OCHOA Laboratories Ltd., (the Assessee) held that where assessee pharmaceutical company, claimed that expenses were incurred towards sponsoring of doctors for sales promotion of its products, but no documentary evidence in support of this claim or confirmation from any doctor for availing services of assessee had been filed by assessee, allowance of only 50 per cent of expenses for sales promotion under section 37(1) was justified

Providing free air travel, stay and food in hotels, local car conveyance, etc., to doctors for prescribing medicines of assessee-pharma company being in contravention of public policy, disallowance be made in hands of assessee under Explanation to section 37(1)

Computer peripherals such as UPS system/inverter are essentially part of computer system and computer in modern age cannot work independently without these basic peripherals, and, thus, UPS/Inverters/Printers are eligible for depreciation at rate of 60 per cent

Facts

- The assessee-company was engaged in the business of trading in pharmaceutical products. A certain sum was incurred by the assessee for sales promotion on 'conference', which included expenditure on Hotel stay, Air/railway travel, car expenses for doctors who attended the conference. To promote the products of the assessee-company. The assessee had also claimed other expenses for sponsoring doctors for other conferences. But it could not produce name and confirmation of the doctors for whom the company incurred hotels stay, travel expenses, etc.
- The Assessing Officer noted that expenses were also incurred on the family members of the doctors and other non-business associates. He held that entire expenses incurred on sales promotion were not toward the business purpose and in absence of any bifurcation of the expenses given by the assessee towards business and non-business purposes, the Assessing Officer estimated 50 per cent of the total sales promotion expenses claimed by the assessee, as not incurred wholly and exclusively for the purpose of business and computed the disallowance.
- The Commissioner (Appeals) held that expenses incurred by the assessee on sales promotion and sponsoring of 'Conference' were wholly and exclusively incurred for the purpose of business, and, accordingly, he deleted the disallowance.
- On appeal, the revenue submitted that assessee had not provided the list of the doctors whose, hotel, air/train travel and local cars was sponsored by the assessee-company in absence of which it was not possible for the Assessing Officer to verify that the expenses had been incurred wholly and exclusively for the purpose of business. Further, he submitted that according to the guidelines of 'Medical Council of India' (MCI) doctors were not authorized to avail such type of freebies in lieu of prescribing medicines to the patients. He, accordingly, submitted that the expenses incurred were in

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violation of the statutory provisions and, therefore, not allowed in view of the *Explanation 1* to section 37.

Held

- The assessee has given list of the expenses of Rs. 2.26 crores on Conference, which have been reproduced by the Commissioner (Appeals) in the impugned order. On perusal of the said list, it is clear that payments of Rs. 25 lakhs has been made for registration of conference and balance expenses have been made towards booking of air tickets, train tickets, hotel bills, local travel cafeteria and other expenses. The dispute between the revenue and the assessee is in respect of the expenses other than the registration expenses. The assessee has made payments to various agencies, like, for air travels for train travel, for hotels bookings etc. The payments made and bills produced before the lower authorities from the vendors certainly confirmed that expenses were incurred by the assessee-company. But the issue is whether the expenses incurred were wholly and exclusively for the purpose of business. The Assessing Officer asked for the list of the doctors who have availed services of air travels, hotel bookings and local travels etc. but the assessee did not provide any list of such doctors. On the contrary, the assessee provided list of all the doctors who participated that conference. All the doctors who participated in the conference were not sponsored by the assessee and therefore the list provided by the assessee was not relevant for verifying the expenses incurred by the assessee. Thus the assessee had though claimed that the expenses were towards sponsoring of doctors but no documentary evidence in support of this claim or confirmation from any doctor of availing the services of the assessee of providing air travel, hotel booking or local car facility had been filed by the assessee before the Assessing Officer. The revenue raised the issue that expenses for booking of hotels and local car have also been claimed under the head 'Conference'. The revenue could not justify as to how those expenses were incurred wholly and extremely for the purpose of business. The revenue also raised the issue that along with doctors their family members also travelled and stayed in the hotels, which in any manner, cannot be treated as expenses incurred wholly and exclusively for the purpose of the business of the assessee and exclusive for the purpose of business. The revenue has argued that participation in conference by the doctors has increased awareness of the product of company and expenses on sponsoring of the doctors has resulted into higher sales volume, thus expenses being an essential part of the business of the assessee, were incurred wholly and exclusively for the purpose of business. The assessee has not given the list of doctors sponsored by the assessee-company. The assessee before the Tribunal referred the name of three doctors. No other list of doctors or their confirmations has been provided by the assessee either before the lower authorities or before the Tribunal. Producing bills and vouchers of the parties to whom payments have been made, can establish that expenses were incurred but for establishing whether the expenses incurred are wholly and exclusively for the purpose of the business, the assessee was required to provide complete list of the doctors along with services availed by them, and the assessee has failed in discharging this onus. In absence of

such a list, the Assessing Officer could not verify that expenses were incurred on doctors only or incurred on their family members or other non-business persons. In absence of required documentary evidence, the disallowance of 50 per cent of the expenses for the sales promotion under section 37(1) was justified.

- The second reason for disallowance cited by the revenue is the expenses being prohibited by the law. According to Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 (MCA Regulations) which have been amended by notification dated 10-12-2009, prohibits medical practitioners from receiving any kind of gift, travel facilities, hospitality and any kind of cash or a monetary grants from the pharmaceutical healthcare industry. Further, the CBDT in Circular No. 5/2012, dated 1-8-2012 clarified that freebies mentioned in the MCA Regulations being an expense prohibited by the law, the disallowance shall be made in the hands of pharmaceutical industrial also.
- Providing free air travel, stay and food in hotels, local car conveyance etc. for prescribing medicines of the assessee is certainly in contravention of the public policy. Thus, 50 per cent expenses out of the sales promotion expenses disallowed by the Assessing Officer was justified.
- In view of above, the order of Commissioner (Appeals) is set aside on the issue in dispute and the order of the Assessing Officer is restored.