IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No.3524/Ahd/2016
(Assessment Year : 2012-13)

Bankers Cardiology Pvt.Ltd. 12, Tagore Nagar Old Padra Road Vadodara-390 015 [PAN No. AACCB 2147 E]	Vs.	The DCIT Circle-1(1)(1) Vadodara
(**Appellant**)	..	(**Respondent**)
Appellant by :		Shri Rajendra |Rajpur, AR
Respondent by :		Shri L lit P.Jain, Sr.DR
Date of Hearing		06/08/2018
Date of Pronouncement		26/10/2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been filed by the Assessee before us against the order dated 04.10.2016 passed by the Commissioner of Income Tax(Appeals)-1, Vadodara [Ld.CIT(A) in short] for Assessment Year (AY) 2012-13 arising out of the order dated 13.03.2015 passed by the DCIT, Circle-1(1)(1), Baroda with the following grounds:

1. *The learned Commissioner of Income Tax (Appeal) has erred in facts and in law in upholding the disallowance u/s.14A r.w. rule 8D of Income Tax Act, 1961 of Rs.1,54,414/-.*
2. *The learned Commissioner of Income Tax (Appeal) has erred in facts and in law in upholding the disallowance of donation expenses u/s.80G of Rs.15,75,000/-.*
3. *The learned Commissioner of Income Tax (Appeal) has erred in facts and in law in upholding the disallowance of Interest on TDS of Rs.1,10,590/-.*
4. *The learned Commissioner of Income Tax (Appeal) has erred in facts and in law in upholding the disallowance of Travelling Expenses of Rs.28,36,700/-.*
5. *The learned Commissioner of Income Tax (Appeal) has erred in facts and in law in upholding the Capital Nature of Expense of Rs.3,34,854/-.*

2. The assessee is a super specialty cardiac hospital operating in the city of Vadodara and Surat providing cardiac treatment to patients. During the previous year relevant to the assessment year under consideration, the assessee has shown gross profit of Rs.4,52,22,098/- on the total receipts of Rs.27,49,71,580/- which works out the gross profit rate at 16.45% as against the gross profit of Rs.3,52,28,195/- on the total receipts of Rs.23,31,25,376/- which works out the gross profit rate at 15.11% shown in the immediately preceding assessment year.

3. The first ground relates to disallowance u/s.14A r w. rule 8D of the IT Rules, 1962 for the administrative expenses incurred for earning exempt income. The case of the assessee is that the investment made by the company was from its accumulated reserves and surplus and therefore disallowance of expenditure in respect of interest and administrative expenses of Rs.1,54,414/- is not permissible neither there can be any question of estimation of expenditure in respect of interest and administrative expenses u/s.14A r.w.rule 8D of IT Rules, 1962. The Assessing Officer (AO) observed in his order that the assessee is ha ing interest bearing borrowed funds. At the same time assessee has shown Rs.6,58 071/- as exempt income as Long Term Capital Gain (LTCG) u/s.10(36) of the Act and Rs.1,89,331/- as exempt dividend income. Since the assessee did not consider the interest expenses and administrative expenses, the AO invoked Rule 8D and made disallowance of Rs.1,54,414/-.

4. During the appellate proceedings, the Ld. CIT(A) granted partial relief to the assessee with the following observations:

"4.2 During the course of the appellate proceedings, the AR of the appellant has submitted that the AO has not recorded any satisfaction as prescribed under section 14A and has straight away proceeded to disallow such expenses. Further, it was claimed that on those investment on which dividend was received should be considered for Rule 8D and not the entire investment made for the purposes of earning exempt income. Accordingly, it was submitted that out of total investments, Rs.1,70,70,591/- in AY 2012-13 and Rs.1,39,67,338/- in AY 2011012 pertains to

investment on which no exempt income was earned. The appellant relied upon certain decisions. But, these decisions have been in cases were no exemption has been earned by the appellant. Whereas, in the current case, the appellant has earned exempt income and claimed such exemption also. Under such circumstances, the entire investments made for the purposes of earning of exempt income are required to be considered for this purpose. Hence, the appellant claim that only Rs.75,994/- should have been disallowed in place of Rs.1,53,589/- as disallowed by the AO out of administrative expenses is not correct and hence, the same is rejected.

4.2.1 So far as the other claims of the appellant are concerned, the AO has show caused the appellant and only thereafter proceeded to disallowance under Rule 8D by recording his satisfaction that the appellant's funds are mixed funds and certain administrative expenses must have been incurred for the purposes of earning of exempt income. In this regard, it is also seen that the appellant has made new investments for such purpose during this year and also mutual funds have been sold to earn Long Term Capital Gain which is also exempt from income. Such investment of top officials of the company and hence, the disallowance as per Rule 8D is required to be made out of administrative expenses.

4.2.2. The appellant's another claim is that the borrowed fund has not been used for earning of exempt income. In this regard, it is seen that the interest payment is negligible i.e Rs.85,300/- . The AO has nowhere established that the borrowed fund had been used for making such investments. At the same time, the interest free funds available with the appellant are more than the investments made for the purpose of earning of exempt income. Hence, as per the decision of the Hon'ble High Court of Gujarat in the case of CIT-I, Vs UTI Bank Ltd., in Tax Ap. No.118 of 2012 vide order dated 22.03.2013, no disallowance our of interest expenditure could have been made in the present case. Accordingly, the disallowance made under Rule 8D is restricted to Rs.1,53,589/- and the appellant gets part relief."

4.1. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

5. At the very outset of the proceedings, the Ld. Representative of the assessee relied upon a judgment passed by the Hon'ble Jurisdictional High Court in the matter of Pr.CIT-IV vs. Sintex Industries Ltd. [2018] 93 taxmann.com 24 (SC) where it was held in favour of assessee to this effect that where the assessee has already had its own surplus funds against which minor investment was made question of making any disallowance of expenditure in respect of interest and administrative expenses u/s.14A does not arise and therefore there was no question of any estimation of expenditure in respect of interest and administrative expenses under Rule 8D.

6. The Ld.DR relied upon the order passed by the authorities below.

7. We have considered the judgment cited by the Ld.AR in support of his case. While deciding the issue, the Hon'ble High Court observed as follows:

"9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of Rs.2319.17 Crores against which investment was made of Rs.111.09 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrat ve expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of Rs.54,39,916/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated herein above, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of Rs.54,39,916/- incurred in respect of interest and administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Pr. CIT V. India Gelatine & Chemicals Ltd. [2015] 376 ITR 553/[2016]66 taxmann.com 356 needs a reference. In the said decision, it is observed and held by the Division Bench of the Court that when the assessee had sufficient interest-free funds out of which concerned investments had been made, disallowance under Section 14A is not justified."

8. Having heard the Ld Representative appearing for the parties and having regard to the facts and circumstances of the case, particularly the judgment cited above by the Ld. Representative of the assessee, we are of the considered view that the case is identical to that of the judgment relied upon. We, therefore, respectfully following the same, allow the ground of appeal in favour of assessee by deleting the orders of disallowance u/s.14A r.w. Rule 8D of the Act passed by the authorities below. Thus, Ground No.1 of assessee's appeal is allowed.

9. The second ground is against upholding of donation expenses u/s.80G of the Act to the tune of Rs.15,75,000/-.

9.1. The facts leading to this issue is this that in the Audit Report at Column 26 deduction u/s.80G has been certified to the extent of Rs.2,50,000/- whereas the assessee

has debited Rs.7,95,111/- in the Profit & Loss account against donation expenses. Upon asking, the assessee submitted the donation receipt of Rs.20,75,000/-. The assessee claimed donation u/s.80G, to the tune of Rs.15,75,000/- to the Disable Welfare Trust of India. However, the certificate of registration of that particular trust was not submitted before the Ld. AO. The AO held that Rs.15,75,000/- as unexplained and the same was disallowed and added to the income of the assessee.

10. In appeal, the Ld. CIT(A) disallowed the claim of deduction on the ground that the Trust was not approved for section 80G deduction till March-2011 and therefore was not allowable to receive donation during the FY 2011-12.

11. To this, the Ld. Representative of the assessee submitted before us that once approval is granted the same is continued to be valued in perpetuality. He relied upon the CBDT Circular dated 27.10.2010 in this respect. Taking into consideration the aforesaid Circular he further submitted that though the approve of the trust expired on 31.03.2011, the same was automatically renewed in perpetuality since the same was not specifically withdrawn. Therefore, according to the assessee the said trust was eligible to receive donation relev nt financial year 2011-12. He further added that the Ld. CIT(A) overlooked this particular Circular in the appellate proceedings and disallowed the donation of Rs.15,75,000/- u/s.80G of the Act which is otherwise legally admissible to the assessee as claimed. The copy of the Trust Registration Certificate is also on record at page Nos.2 & 3 of the paper-book No.2 as pointed out by him.

12. On the other hand, the Ld. DR relied upon the orders of the authorities below.

13. We find from the order passed by the Ld. AO that the registration certificate was not provided to him by the assessee and practically on that basis deduction u/s.80G was not allowed. Subsequently, the Ld. CIT(A) deleted the addition made u/s.69C as made

by the AO, but disallowed of deduction u/s.80G on account of payment of Rs.15,75,000/- to Disable Welfare Trust of India where we joint issues. The CBDT Circular No.7/2010 [F.No.197/21/2010-ITA-I] dated 27.10.2010 specifically deals with the approvals for granting benefit u/s.80G in the following manner:

"5. As regards approvals granted upto 1-10-2009 under section 80G by the Commissioners of Income-tax/Directors of Income-tax, proviso to section 80G(5)(vi) clarified that any approval shall have effect for such assessment year or years not exceeding five assessment years as may be specified in the approval. The above proviso was deleted by the Finance (No. 2) Act, 2009. The intent behind the deletion of above proviso as explained in the explanatory memorandum to Finance (No. 2) Bill, 2009 was as under:

"Further as per clause (v/) of sub-section (5) of section 80G of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rules, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the appro al.

Due to this limitation imposed on the va idity of such approvals, the approved institutions or funds have to bear the hardsh p of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, it is proposed to omit the proviso to clause (v/) of sub-section (5) of section 80G to provide that the approval once granted shall continue to be valid in perpetuity. Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund. This amendment will take effect from 1st day of October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn."

It appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made in Rule 11 A(4). To remove any doubts in this regard, it is reiterated that any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn."

13.1. Taking into consideration the essence of the particular Circular, we are of the considered opinion that the assessee is entitled to get deduction u/s.80G of the Act since the Disable Welfare Trust of India was rightly eligible to receive donations as claimed by the assessee.

14. The third ground has not been pressed by the Ld. AR and therefore the same is dismissed.

15. The upholding of capital nature of expenses of Rs.3,34,854/- made by the Ld. CIT(A) has been challenged in Ground No.4.

16. The assessee company regularly organizes academic conferences for doctors known as "CARDCON" i.e. Cardiac Conference. For such purchases, the company receives contributions from pharmaceutical companies. The assessee debited an amount of Rs.28,36,700/- under the head 'travelling expenses'. From the details furnished, it was found that the ledger of expenses was against the seminar arranged at Hong Kong. The details of purposes of such seminar names, addresses and PANs of the addresses who had attended the said seminar was also called for as well as subsequent outcome and/or similar benefit derived out of the seminar in procurement of business was also directed to be furnished. The business exigency/expedition of the 'travelling expenses' with supporting evidences were also called for. However, the assessee could not explain the purpose and subsequent outcome of the seminar, neither the assessee could show that the expenses were wholly and exclusively for business purpose. Addition of Rs.28,36,700/- was made by the AO in the hands of the assessee.

17. In appeal, the Ld. CIT(A) in his order categorically mentioned that a list of persons claiming them to be doctors for whom such expenditure was made as furnished by the assessee but names of several persons instead of PAN "no data" has been

mentioned. It also appears from such document that spouses of some of those doctors had also travelled on the tickets provided by the assessee. The same has happened in majority of the cases where the PANs of spouses were not available. In the absence of any details of the seminar, the Ld. CIT(A) came to a conclusion that the so-called seminar expenses as claimed by the assessee was incurred for pleasure trip of certain persons and not wholly or exclusively for the business of the assessee. Such expenses were also prohibited by Regulation 6.4.1 of the Indian Medical Council (Professional Conduct, and Etiquette & Ethics) Regulation 2002 which creates Bar on the Physicians to receive gifts or commission or books in consideration of or for referring rendering or procuring any patient for medical surgical or other treatment. The Ld. CIT(A) thus disallowed such expenses.

18. At the time of hearing of the instant appeal, the Ld. Counsel for the assessee submitted at length before us. He submitted that the Regulation 6.4.1 of the Indian Medical Council (Professional Conduct, and Etiquette & Ethics) Regulation 2002 is not binding upon the assessee company. The said proposition has been clarified in the judgment of Max Hospital vs. MCI[(WP(C) 1334 of 2013] passed by the Hon'ble Delhi High Court on 10.01.2014. He further argued before us that the object of medical conferences is to update the participants with the latest development in medical field specifically in the discipline of cardiology. Such conferences are conducted by renowned cardiologists of the company through presentations/case study discussions/interactive sessions in order to provide correct diagnosis and treatment with the help of new technological developments in the field of cardiology; the same is conducted particularly to update the doctors with such latest developments in treating the patients. This surely enhances the knowledge and upgrading of skills of the professionals and thus upgrading the business of the company. The entire arrangements for the conference including Air ticket booking, hotel/conference venue booking/lodging and boarding/other travel arrangements/Visa and Passport were outsourced to SOTC Company. The expenditure

incurred for the conferences have also been allowed as deductible expenditure over the years and the surplus earned by the assessee company in organizing such conference has been offered to tax. MCI guidelines and the Circular No.5 of 2012 dated 01.08.2012 has no role to play in deciding the issue since the same has not been issued with retrospective effect. In support of the same, he relied upon the judgement of Solvay Pharma India Ltd. vs. Principal Commissioner of Income-tax reported at (2018) 89 taxmann.com 249 (Mumbai – Trib.).

19. On the contrary, the Ld. Representative of the Department relied upon the orders passed by the authorities below.

20. We have heard the Ld. Representatives appearing for the respective parties. We have perused the relevant materials available on record. We find that the authorities below has particularly rejected the claim of the applicant relying upon the Regulation 6.4.1 of the Indian Medical Council (Professional Conduct, and Etiquette & Ethics) Regulation 2002. The judgement relied upon in the matter of Max Hospital, Pitampura vs. Medical Council Of India (WPC 1334/2013) decided the same not applicable to the hospitals. While doing so, the Hon'ble High Court at Delhi observed as follows:

"7. In the counter affidavit filed by the Respondents, it is not disputed that the MCI under the 2002 Regulations has jurisdiction limited to taking action only against the registered medical practitioners. It's plea however, is that it has not passed any order against the Petitioner hospital therefore; the Petitioner cannot have any grievance against the impugned order. At the same time, it is stated that only simple observations were made by the Ethics Committee of the MCI about the state of affairs in the Petitioner hospital and the same did not harm any legal right or interest of the Petitioner. It will be apposite to extract the relevant paragraphs of the counter affidavit filed by the MCI as under:-

"4. Preliminary Objections:

(i) That the instant writ petition is not maintainable under Article 226 of the Constitution of India as there is no cause of action for filing of this instant petition. The MCI has not passed any order against the petitioner in the impugned minutes of meeting dated 27.10.2012, therefore, there is no cause of action for filing the instant writ petition.

(ii) That the MCI has not passed any order against the petitioner and nor does the impugned minutes of meeting dated 27.10.2012 affect any legal right or interest of the petitioner which the petitioner seeks to enforce by filing this writ petition and thus the same is not maintainable.

(iii) That the jurisdiction of MCI is limited only to take action against the registered medical professionals under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (hereinafter the 'Ethics Regulations') and has no jurisdiction to pass any order affecting rights/interests of any Hospital, therefore the MCI could not have passed and has not passed, any order against the petitioner which can be assailed before this Hon'ble Court in writ jurisdiction.

(iv) That a simple observation made by the Ethics Committee of MCI about the state of affairs in the petitioner Hospital has harmed no legal right/interest of the petitioner for which a writ can be issued by this Hon'ble Court against the answering respondent.

(v) That the petitioner contends that an adverse order has been passed by the MCI and that too without hearing the petitioner. Both these contentions of the petitioner are incorrect and frivolous as firstly, there is no adverse order made by the MCI against the petitioner as MCI does not have any such jurisdiction; secondly, the petitioner was throughout represented before the Ethics Committee of MCI during the proceedings initiated on complaint of one Mr. Sunil Manchanda against some of the doctors working in the petit oner hospital. The petitioner was heard through its advocates on several occasions and had submitted several documents also in support of their stand."

8. It is clearly admitted by the Respondent that it has no jurisdiction to pass any order against the Petitioner hospital under he 2002 Regulations. In fact, it is stated that it has not passed any order against the Petitioner hospital. Thus, I need not go into the question whether the adequate infrastructure facilities for appropriate post-operative care were in fact in existence or not in the Petitioner hospital and whether the principles of natural justice had been followed or not while passing the impugned order. Suffice it to say that the observations dated 27.10.2012 made by the Ethics Committee do reflect upon the infrastructure facilities available in the Petitioner hospital and since it had no jurisdiction to go into the same, the observations were uncalled for and cannot be sustained.

9. Since the MCI had no jurisdiction to go into the infrastructure facilities, I need not also go into the aspect that in the year 2011, the facilities available in the hospital were inspected and were found to be in order.

10. The petition therefore has to succeed. I hereby issue a writ of certiorari quashing the adverse observations passed by the MCI against the Petitioner hospital highlighted in Para 1 above.

11. The writ petition is allowed in above terms."

20.1. The said issue was also decided in the matter of Solvay Pharma India Ltd. vs. Pr.CIT, the relevant portion thereof is as follows:

"20. The intent of the applicability of the MCI Regulations was always to cover only individual medical practitioners, and not the pharmaceutical and medical device companies. Whether there is any contravention of the MCI Regulations or not is a matter which can be decided by the MCI itself and not by the Income-tax Department. Furthermore, the MCI has itself admitted that it has no jurisdiction whatsoever over any association/ society etc and its jurisdiction is confined only to the conduct of the registered medical practitioners. Furthermore, since the said MCI Regulations 2002 contains punitive "provisions, it has to be read strictly and consequently it can apply only to Medical Practitioners and Physicians and not to the pharmaceutical companies. Further, MC Act, 1956 does not apply pharmaceutical companies and consequently MCI Regulations 2002 cannot apply to such companies.

21. CBDT Circular no. 5 of 2012 seeks to disallow expenditure incurred by pharmaceutical companies inter-alia in providing 'freebies' to doctors in violation of the MCI Regulations. The term "freebies' has neither been defined in the Income-tax Act nor in the MCI Regulations'. However, the expenditure so incurred by assessee does not amount to provision of 'freebies' to medical practitioners. The expenditure incurred by it is in the normal course of its business for the purpose of marketing of its products and dissemination of knowledge etc and not with a view to giving something free of charge to the doctors. The act of giving something free of charge is incidental to the main objective of product awareness. Accordingly, it does not amount to provision of freebies. Consequently, there is no question of contravention of the MCI Regulations and applicability of Circular no. 5 of 2012 for disallowance of the expenditure.

22. The department has not brought anything on record to show that the aforesaid regulation issued by Medical Council of India is meant for pharmaceutical companies in any manner. On the contrary, the assessee has brought to the notice of the bench the judgment of the Delhi High Court in the case of Max Hospital v. MCI'm [WPC 1334 of 2013, dated 10-1-2014], wherein the Medical Council of India admitted that the Indian Medical Council Regulation of 2002 has jurisdiction to take action only against the medical practitioners and not to health sector industry. From the aforesaid decision, it is ostensibly clear that the Medical Council of India has no jurisdiction to pass any order or regulation against any hospital or any health care sector under its 2002 regulation. So once the Indian Medical Council Regulation does not have any jurisdiction nor has any authority under law upon the pharmaceutical company or any allied health sector industry, then such a regulation cannot

have any prohibitory effect on the pharmaceutical company like the assessee. If Medical Council regulation does not have any jurisdiction upon pharmaceutical companies and it is inapplicable upon Pharma companies like assessee then, where is the violation of any of law/regulation? Under which provision there is any offence or violation in incurring of such kind of expenditure.

23. Now coming to the Explanation to Section 37(1) invoked by the CIT, the Explanation provides an embargo upon allowing any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law. This means that there should be an offence by an assessee who is claiming the expenditure or there is any kind of prohibition by law which is applicable to the assessee. Here in this case, no such off nce of law has been brought on record, which prohibits the pharmaceutical company not to incur any development or sales promotion expenses. A law which is applicable to different class of persons or particular category of assessee, same cannot be made applicable to all. The regulation of 2002 issued by the Medical Council of India (supra), provides limitation/curb/prohibition for medical practitioners only and not for pharmaceutical companies. Here the maxim of 'Expressio Unius Est Exclusio Alterius' is clearly applicable, that is, if a particular expression in the statute is expressly stated! for particular class of assessee then by implication what has not been stated or expressed in the statute lias to be excluded for other class of assessee. If the Medical Council regulation is applicable to medical practitioners then it cannot be made applicable to Pharma or allied health care companies. If section 37(1) is applicable to an assessee claiming the expense then by implication, any impairment caused by Explanation 1 will apply to that assessee only. Any impairment or prohibition by any law/regulation on a different class of person/assessee will not impinge upon the assessee claiming the expenditure under this section.

24. We observe that the CBDT Circular dated 1-8-2012 (supra) in its clarification has enlarged the scope and applicability of 'Indian Medical Council Regulation 2002' by making it applicable to the pharmaceutical companies or allied health care sector industries. Such an enlargement of scope of MCI regulation to the pharmaceutical companies by the CBDT is without any enabling provisions either under the provisions of Income Tax Law or by any provisions under the Indian Medical Council Regulations. The CBDT cannot provide casus omissus to a statute or notification or any regulation which has not been expressly provided therein. The CBDT can tone down the rigours of law and ensure a fair enforcement of the provisions by issuing circulars and by clarifying the statutory provisions. CBDT circulars act like 'contemporanea expositio' in interpreting the statutory provisions and to ascertain the true meaning enunciated at the time when statute was enacted. However the CBDT in its power cannot create a new impairment adverse to an assessee or to a class of assessee without any sanction of law. The circular issued by the CBDT must confirm to tax laws and for purpose of giving administrative reliefer for clarifying the provisions of law and cannot impose a burden on the assessee, leave alone creating a new burden by enlarging the scope of a different regulation issued under a different act so as to impose any kind of hardship or

liability to the assessee. In any case, it is trite law that the CBDT circular which creates a burden or liability or imposes a new kind of imparity, same cannot be reckoned retrospectively. The beneficial circular may apply retrospectively but a circular imposing a burden has to be applied prospectively only. Here in this case the CBDT has enlarged the scope of 'Indian Medical Council Regulation, 2002' and made it applicable for the pharmaceutical companies. Therefore, such a CBDT circular cannot be reckoned to have retrospective effect. The free sample of medicine is only to prove the efficacy and to establish the trust of the doctors on the quality of the drugs. This again cannot be reckoned as freebies given to the doctors but for promotion of its products. The pharmaceutical company, which is engaged in manufacturing and marketing of pharmaceutical products, can promote its sale and brand only by arranging seminars, conferences and thereby creating awareness amongst doctors about the new research in the medical field and therapeutic areas, etc. Every day there are new developments taking place around the world in the area of medicine and therapeutic, hence in order to provide correct diagnosis and treatment of the patients, it is imperative that the doctors should keep themselves updated with the latest developments in the medicine and the main object of such conferences and seminars is to update the doctors of the latest developments, which is beneficial to the doctors in treating the patients as well as the pharmaceutical companies.

25. In view of the above discussion, we do not find any merit in the order passed u/s.263."

20.2. Whether the CBDT Circular issued on 01.08.2012 having any retrospective effect so as to apply the same in the case of the assessee for the AY 2012-13 answered by the ratio laid down in the judgement of Cadila Pharmaceuticals Ltd. vs. DCIT, Range-1 Circle-1(1)(2), Ahmedabad by the Co-ordinate Bench in favour of assessee. The relevant portion dealing the issue in such judgment is as follows:

"28. We have heard both the parties. Mr. Soparkar is very fair in pointing out at the outset that this tribunal's decision in Asstt. CIT v. Liva Healthcare Ltd. [20161 161 1TD 63/73 taxmann.com 171 (Mum. -Trib.) upholding such a disallowance in case of pharmaceutical companies offering free samples to doctor post introduction of the relevant product in market after establishing end use; is hit by Section 37(1) explanation. He however refers to another co-ordinate bench decision in Macleods Pharmaceuticals Ltd. v. Addl. CIT [20161 161 ITD 291/74 taxmann.com 250 (Mum. - Trib.) holding that the above Board's circular

dated 01.08.2012 would not have any retrospective effect since not operating in assessment years 2010-11. He further quotes another co-ordinate bench decision in Dy. CITv. PEL Pharma (P.) Ltd. [20171 163 ITD 10/78 taxmann.com 36 (Mum. - Trib.) distinguishing the above case law in Revenue's favour whilst deleting an identical disallowance on the ground that such business promotion expenses are allowable as business expenditure not hit u/s. 37(1) explanation. We afforded ample rebuttal opportunity to the Revenue. Learned Departmental Representative fails to indicate any distinguishing features therein. We find that the above latter co-ordinate bench has elaborately discussed all case laws, IMC regulations as well as Board's circular in deciding the issue. We therefore adopt the very reasoning herein as well to delete the impugned disallowance. The assessee succeeds in its instant substantive ground. Its appeal ITA No.848/Ahd/2016 is par ly accepted."

21. From the above judgments it appears that the CBDT Circular issued on 01.08.2012 without any retrospective effect not applicable to the instant case of the assessee for AY 2012-13 nor the MCI guidelines which was relied upon by the Revenue while rejecting the claim of the appellant company has any manner of application. The seminar conducted in abroad by the assessee company with the financial aid of the pharmaceuticals company does not give any scope to treat the same for the purpose other than business of the assessee company so far it relates to the medical practitioners. Taking into consideration the entire aspects of the matter, we are of the considered opinion that the assessee's claim towards travelling expenses is justified. But having regard to the disputed question of facts relating to the travelling expenses incurred towards the persons sponsored by the company other than the doctors needs to be verified in its proper perspective with the supporting documents to be made available by the assessee to the Ld. Assessing Officer. We therefore find it proper for the ends of justice to set aside the issue to the file of Ld. Assessing Officer to verify the claim of the company towards the expenses incurred upon the persons other than the doctors as indicated by the authorities below in the order impugned before us. We make it clear that the assessee will co-operate with the Ld. Assessing Officer by furnishing the details of those persons to ascertain the actual expenses incurred on the medical practitioners which only required to be allowed after being fully satisfied upon verification of the

details to be furnished by the assessee at the time of assessment. The ground of appeal preferred by the assessee is thus partly allowed for statistical purposes.

22. In the result, assessee's appeal is partly allowed for statistical purposes.

This Order pronounced in Open Court on 26 /10/2018

Sd/-	**Sd/-**
(AMARJIT SINGH)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 26/ 10 /2018

टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1 Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
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