

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 1412/Kol/2016

Assessment Year : 2010-11

Amit Ghose  
[PAN: ADXPG 4852 G]  
(Appellant)

-vs- DCIT, Circle-22, Kolkata  
(formerly JCIT, Range-22, Kolkata)  
(Respondent)

For the Appellant : Shri Miraj D Shah, AR

For the Respondent : Shri Saurabh Kumar, Addl. CIT Sr. DR

Date of Hearing : 21.02.2018

Date of Pronouncement : 09.03.2018

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-6, Kolkata [in short the Id CIT(A)] in Appeal No.75/CIT(A)-6/Kol/13-14 dated 27.04.2016 against the order passed by the JCIT, Range-55, Kolkata [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 26.03.2013 for the Assessment Year 2010-11.

2. The Ground No. 1, 8 and 10 raised by the assessee are general in nature and does not require any specific adjudication.

**3. Disallowance of advertisement and publicity expenses: Rs. 202014/-**

Brief facts of this issue is that the assessee is an Urologist Surgeon doing independent practice. For the assessment year 2010-11, the assessee filed his return of income on 30.09.2010 declaring total income of Rs. 43,95,640/-. In the assessment proceedings, the assessee produced the books of accounts, bills and vouchers, audited accounts,

consolidated profit and loss account etc. and the same were verified by the Id. AO. The assessee runs a clinical laboratory named “The Oxford Clinic”. The Id. AO observed that the assessee has debited a sum of Rs. 202014/- under the head advertisement and publicity. The Id. AO sought to verify the same and accordingly show caused the assessee to prove as to how the said expenditure would be treated as an expenditure incurred wholly and exclusively for the purpose of business. In response to this, the assessee stated that he had prepared several medical literatures in the field of Urology and publicized the same in various news papers and TV channels. The literatures are meant for general awareness so as to prohibit and cure the urological diseases. All these publications were made on behalf of the clinic and the clinic being a proprietary concern of the assessee, the payments for the same were made by the assessee, the details of the same were furnished as under:

|   | <b>Name of the party to whom payment was made</b> | <b>Purpose as stated on the bills issued by the parties</b>   | <b>Amount</b>      |
|---|---|---|--------------------|
| 1 | Progressive publicity service                     | Kidney stone & prostate gland problem                         | 53,006.49          |
| 2 | Progressive publicity service                     | Kidney stone – display ad                                     | 34,093.74          |
| 3 | ABP Pvt Ltd                                       | --  | 5,489.00           |
| 4 | ABP Pvt Ltd                                       | --  | 2,425.00           |
| 5 | Srijan Advertising                                | Publication   | 11,000.00          |
| 6 | Mahua Basu Mullick                                | Telecast fee to Prasar Bharti for “Hello Doctor Babu”         | 20,000.00          |
|   |   | Concept, design & space for display article – “Aajkal Sastha” | 54,000.00          |
|   |   | Studio charges  | 12,000.00          |
|   |   | Others  | 10,000.00          |
|   | <b>Total</b>                                      |   | <b>2,02,014.23</b> |

The assessee submitted that these expenditures were incurred to publicize medical materials with a common sense approach so that general people take interest to the disease and solution thereon. It was further submitted that it is a common knowledge that TV programmes in Prasar Bharati like ‘Hello Doctor Babu’ are very popular as it allows the patients/common man to interact directly with the panel doctors to ask questions about the disease as well as prevention thereof. It was further submitted that

Prasar Bharati, being a government organization, will neither allow any programme on national television in order to promote the business of any doctor, nor receive any payment for any service connected with offence or any act which is prohibited by law. Further, the name of the publication 'Aajkal Sastha' suggests that the publication is not meant for advertisement of any doctors but a general discussion on health issues. The ld. AO did not agree to the contention of the assessee and held that the amount in the sum of Rs. 202014/- is disallowable u/s 37(1) of the Act as the said expenses are incurred in violation of provisions of Indian Medical Council Regulation Act, 2002 and accordingly applied the Explanation to section 37(1) of the Act. This action of the ld. AO was upheld by the Ld. CIT(A). Aggrieved the assessee is appeal before us on the following ground:

*2. For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 2,02,014/- on account of advertisement and publicity u/s 37(1) of the IT Act, 1961. The disallowance was not called for and hence the same be reversed.*

4. We have heard the rival submissions. We find that the assessee had made payments to progressive publicity service to the tune of Rs. 87,100/- towards advertisement in 'Saptahik Bartaman' towards addressing the problem connected with Kidney Stone and Prostate Gland. We find that the assessee has spent a sum of Rs. 7914/- for advertisement on Anandabazar Patrika. We find that the assessee had spent Rs. 11,000/- towards publication on health related issues and payment was made to Srijan advertisement. The assessee had made payment of telecast fee to Prasar Bharati for 'Hello Doctor Babu' for Rs. 20,000/-. The assessee has also paid of Rs. 54,000/- towards concept, design and space for display article in 'Aajkal Sastha' which is a health magazine wherein the general discussion in health issues were recorded. In other words, the assessee has participated in dissemination of knowledge in the health magazine for the general welfare of the public at large. Even the telecast fee to Prasar Bharti, being a government organization, is made only for informing the general

public at large about the urological diseases and necessary preventive measures to be taken by the public for not getting invited with these diseases.. We are in agreement with the argument advanced by the Ld. AR that Prasara Bharati, being a government organization, would not allow any programme on national television in order to promote the business of just a single doctor like assessee. We also hold that Prasara Bharati being a Government Organization would not receive any fee for any service connected with offence under any Act or any law. In other words, they would not engage in any activity and receive consideration for the Act which is prohibited by law. We are also inclined to accept the argument of the Id. AR that the assessee had incurred expenses to explain by publicizing a general literature with image and diagram of human body to make aware of the urological diseases including its prevention and cure, which cannot be merely treated as advertisement or publicity expenses.

5. The Id. AO had stated that the expenditure incurred towards advertisement by the assessee is in violation of provision of Indian Medical Council Regulation Act, 2002 and thereby is a expenditure incurred for committing offence or an act which is prohibited by law. Even assuming that the act of the assessee would be in violation of code of ethics as formulated by the medical council of India, the same, in our considered opinion, would not get covered under the ambit of Explanation to section 37(1) of the Act, inasmuch as the Medical Council of India is an independent body and not a department under the Ministry of Health. The Indian Medical Council is holding regulatory powers on its members. The guidelines issued by them are for the purpose of compliance of the professional ethics. Such guidelines cannot be equated to any legal provision having statutory force/recognition. In violation of the same, no civil suit is maintainable on the person who has violated. Hence, we are of the considered view that the same would not fall under the ambit of Explanation 1 to section 37(1) of the Act. The genuineness of the expenditure incurred by the assessee has not been

disputed by the Revenue. We find that the intention of the assessee doctor in the instant case is apparently to prevent disease in future by making public awareness. Such a proactive measure taken by the person like assessee should be rather welcomed than to criticize. In this regard, it would be relevant to get into the following case laws :-

**a) *ARCH Finance Ltd vs ACIT reported in (2007) 165 Taxman 188 (Delhi) – ITAT Delhi D Bench dated 10.8.2007. The head notes are reproduced below:-***

*Section 37(1) of the Income Tax Act, 1961- Business expenditure –Allowability of – Assessment Year 2001-02 – Assessee, which was a stock/share broker and was a member of Delhi Stock Exchange paid various amounts as penalty on account of his late delivery , short delivery, short margin etc., to National Stock Exchange and claimed deduction of same as revenue expenditure – Whether since impugned payments made by assessee were not for infraction of law, same were allowable as revenue expenditure – Held, Yes.*

**b) *Goldcrest Capital Markets Ltd vs ITO reported in (2010) 2 ITR (TRIB.) 355 (Mum) – ITAT Mumbai B Bench dated 21.1.2009. The head notes are reproduced below:-***

*Section 37(1) of the Income Tax Act, 1961- Business expenditure –Allowability of – Assessment Years 2002-03 & 2003-04*

*Fine paid by assessee stock broker who was a member of NSE, on account of unfair trade practice and un-business like conduct is not for violation of law and hence, cannot be disallowed.*

*The members of NSE Ltd are bound through the articles of association to abide by the rules, regulations and bye-laws of the NSE Ltd. Nevertheless, such rules, regulations and bye-laws can be considered as regulations for controlling the internal inter se obligations and rights of the members of NSE Ltd. Though every member of NSE Ltd would be obliged to abide by such rules and regulations, a violation thereof cannot be treated as violation of a statutory law or rule. The fines and penalties levied for violation on account of “unfair trading practice” as specified in 4.6 of the NSE regulations and “un-business like conduct” as specified in IV(4)(e) of the NSE rules cannot be equated with violation of a statutory rule or law.*

*Thus, fine paid by the assessee stock broker who was a NSE member, on account of unfair trade practice and un-business like conduct , is not for violation of law and, hence, cannot be disallowed.*

**c) Master Capital Services Ltd vs DCIT reported in (2008) 23 SOT 60 (CHD.) (URO) – ITAT Chandigarh A Bench dated 26.2.2007. It was held that :**

*“The assessee incurred the expense in the shape of fines during normal course of business and there was no infraction of any statutory law. In the type of business of the assessee, it is beyond the control of share broker to know in advance that the trading volume would increase beyond the fixed exposure limit because trading depends upon the market trend and on certain dates there can be extraordinary increase in trading volume. On that increased trading volume, the concerned member also earns income in the shape of commission, etc., which is taxable. So, the fine by the share broker which was correlated with the increase in trading volume, which cross the fixed exposure limit, could not be considered as an infraction of law, although irregularities were there. In the instant case, for the said irregularities, the assessee suffered and paid the fine but this payment could not be termed as penal in nature. Similarly, late submission of margin certificate due to computer software problem could not be considered as infraction of law and if any fine was paid for such late submission, due to unavoidable circumstances in the regular course of business that could not also be termed as penal in nature. Similarly, fine paid for delay in making the deliveries of shares due to deficiencies in the documents like non-matching of signatures, et., could not be considered as penal in nature. Irregularities of that type could not be ruled out in such type of business and any fine paid for those irregularities could not be considered as an infraction of any law. So, the payments made by the assessee in the regular course of business could not be termed as penal in nature, particularly when the assessee did not commit those irregularities intentionally and regularly. Therefore, considering the totality of the facts of the case, it was to be held that, although some violations of the conditions prescribed by the NSE was there, but those violations occurred in the regular course of business and same could not be considered as infraction of any statutory law. So, the expenses incurred by the assessee in regular course of business were allowable. Hence, the impugned orders were to be set aside. In the result, the appeal was to be allowed.”*

In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the aforesaid judicial precedents, we hold that the expenditure incurred in the sum of Rs. 202014/- deserves to be allowed as business expenditure of the assessee u/s 37(1) of the Act.

**6. Disallowance of purchase of gift items incurred through credit card:- Rs. 90850/-**

The assessee submitted that he had incurred expenses of Rs. 90850/- for purchase of gift items for seniors and other doctors with whom the assessee had to interact to discuss latest techniques, methods etc while conducting surgeries and other medical treatments. The purchase of gift items were in the form of gold ornaments, leather goods, dress materials, suitcase and other utility items etc. The assessee explained that the he had organized various seminars and in the said seminars several senior doctors and fellow doctors in the profession had participated and had shared their knowledge and wisdom, to whom gifts were given by the assessee in the place of fees payable to them for sharing their knowledge. Accordingly, the assessee also explained that the profession requires continuous updation of knowledge and learning modern technology. For this purpose, the meeting was arranged wherein the doctors working on the same field were invited. As the participants are super specialists and enjoyed high status in the society, it would be demeaning on the part of the assessee to pay fees to them. Accordingly, the assessee in lieu of fees, thought it fit to provide them certain gift items as a token of his love and affection and as a matter of appreciable gesture, presented certain gift items comprising of various gift items of Rs. 90850/- to various persons. The Id. AO however held that these expenses are nothing but the personal expenses of the assessee as the same were incurred through credit card of the assessee. Accordingly he dismissed the same as not meant for business purposes, which was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following ground:

*3. For that in the facts and circumstances of the case the learned Commissioner of Income Tax(Appeals) erred in upholding the disallowance of Rs. 90,850/- on account of expenses incurred by credit card u/s 37(1) of the IT Act, 1961. The disallowance was not called for and hence the same be reversed.*

7. We have heard the rival submissions. We find that the purchase of gift items were incurred for handing over to various super specialists who had participated in the seminar organized by the assessee for the purpose of updation of knowledge thereon. This, in our considered opinion, is an expenditure incurred for the purpose of profession of the assessee. We also find that the assessee had given reasonable explanation as to why he had presented gift items to various doctors in lieu of payment of fee. The explanation given is very logical. We hold that the expenditure in the sum of Rs. 90,850/- would have to be allowed as a deduction u/s 37 of the Act. Accordingly, ground no. 3 raised by the assessee is allowed.

**8. Disallowance of Entertainment Expenses – Rs. 11,096/-**

The assessee incurred a sum of Rs. 11,096/- towards entertaining his seniors while holding the seminar. These expenses were incurred only towards dinner expenses and the same were treated as personal expenditure of the assessee by the Id. AO and accordingly disallowed. This action of the Id. AO was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following grounds:

*4. For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 11,096/- on account of entertainment expenses u/s 37(1) of the IT Act, 1961. The disallowance was not called for and hence the same be reversed.*

9. We have heard the rival submissions. We find that the entertainment expenses of Rs. 11,096/- incurred by the assessee were only for the purpose of dinner while holding meetings with his seniors in hotels for skill upgradation. This would be squarely allowable as business expenditure. It is not the case of the Id. AO that the same are not supported by any bills or vouchers. Accordingly, the same is allowed as deduction u/s 37 of the Act and hence the ground no. 4 raised by the assessee is allowed.



**10. Disallowance of travelling expenses- Rs. 68,246/-**

Brief facts of this issue is that the Id. AO observed that the assessee had incurred foreign travel expenses to the tune of Rs. 68,246/-, for which details were sought by the Id. AO. The assessee replied that the said expenditure was incurred for attending medical conference in London as well as meeting doctors and surgeons in London. The assessee also expressed his inability to produce the evidences in support of such travel to justify the claim of deduction. The assessee also stated that he was himself at one point in time was part of NHS of U.K. and accordingly is well known to doctors in U.K. The medical profession being intangible and skill based profession, the assessee in order to keep updated with best and latest practices, had to interact with seniors and other doctors and discuss latest methods, techniques, discoveries etc. The entire payments were made by the assessee using his credit card which contains name of the place in London. Hence, the genuineness of the expenditure stand proved. The Id. AO was not satisfied with this reply and accordingly disallowed the same in the assessment which was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following ground:

*5. For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 68,246/- on account of travel expenses u/s 37(1) of the Income Tax Act, 1961. The disallowance was not called for and hence the same be reversed.*

11. We have heard the rival submissions. We find that the assessee has only made oral submissions to justify his claim and had not produced any evidence in support of his claim of visiting U.K., London for the purpose of medical conference and meeting senior doctors thereon in order to get himself updated and improve his skill. Hence, we hold that the revenue had rightly disallowed the said expenditure in the assessment. Accordingly ground no. 5 is dismissed.

**12. Disallowance of meeting and seminar expenses – Rs. 15,478/-**

The Id. AO from the consolidated profit and loss account filed by the assessee observed that the assessee has debited Rs. 15,478/- as meeting and seminar expenses from the details submitted by the assessee, the Id. AO observed that these are payment of club bills i.e “ Calcutta Club” and the “ Bengal Club”. The assessee was show caused by the Id. AO as to why the same should not be treated as personal expenses in nature. In reply, the assessee filed explanation that he had held meetings with senior doctors at clubs for upgradation of his skill and from the details filed, it could be found that these are only bills and monthly subscription of two clubs in which he is a member and accordingly the said expenditures are wholly and exclusively for the purpose of business of the assessee. The Id. AO however did not agree with this view and proceeded to disallow this sum of Rs. 15,478/- in the assessment which was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following ground:

*6. For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 15,478/- on account of Meeting & Seminar expenses u/s 37(1) of the IT Act, 1961. The disallowance was not called for and hence the same be reversed.*

13. We have heard the rival submissions. It is not in dispute that the assessee is a member of Calcutta Club and Bengal Club. From the details submitted before the Id. AO, it was found that these expenses are incurred towards monthly subscription of club bills and for meager portion towards meeting expenses of doctors on certain occasions. In our considered opinion these expenses are wholly and exclusively meant for the purpose of business and are squarely allowable as deduction u/s 37(1) of the Act. Accordingly, ground no. 6 raised by the assessee is allowed.

**14. Disallowance of car repair expenses – Rs. 1,60,000/-**

The Id. AO, on going through the details of car maintenance expenses included in car expenses in the profit and loss account of the assessee, observed that the assessee has not furnished supporting evidences in support of expenses claimed for the following parties:

|                     |              |
|---------------------|--------------|
| Royal Motors        | Rs. 38,310/- |
| Maruti Link         | Rs. 49,330/- |
| Battery Centre      | Rs. 7,250/-  |
| Samanta Automobiles | Rs. 65,110/- |

Since the assessee could not produce evidence in the form of bills for the aforesaid expenses, the Id. AO proceeded to disallow the entire sum of Rs. 1,60,000/- and added the same with the total income of the assessee, which was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following ground:

*7. For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs. 1,60,000/- on account of car repair expenses u/s 37(1) of the Income Tax Act, 1961. The disallowance was not called for and hence the same be reversed.*

15. We have heard the rival submissions. We find that the assessee is a doctor by profession and runs a clinic. It is not in dispute that the assessee maintains three cars to support his profession as well as his clinical establishments. The Id. AO had allowed depreciation on these cars in the assessment and hence in our considered opinion, there is no reason to disbelieve the car maintenance expenses. Admittedly, the assessee has not produced bills and vouchers for the aforesaid maintenance expenses. But the usage of these cars for the purpose of business or profession is not in dispute in the instant case. Hence, in our considered opinion, disallowance of Rs. 80,000/- towards the same would meet the ends of justice. Accordingly, ground no. 7 raised by the assessee is partly allowed.

16. Ground no. 9 raised by the assessee is with regard to charging of interest u/s 234A, 234B, 234C and 234D of the Act which are consequential in nature and does not require any adjudication.

17. In the result, the appeal of the assessee is partly allowed for statistical purposes.

**Order pronounced in the Court on 09.03.2018**

Sd/-  
[A.T. Varkey]  
Judicial Member

Sd/-  
[ M.Balaganesh ]  
Accountant Member

Dated : 09.03.2018  
SB, Sr. PS

Copy of the order forwarded to:

1. Amit Ghose, C/o, D J Shah & Co, Kalyan Bhawan, 2, Elgin Road, Kolkata-700020.
2. DCIT, Circle-22, Kolkata (formerly JCIT, Range-22, Kolkata), 54/1, Rafi Ahmed Kidwai Road, Kolkata-700016.
3. C.I.T(A)- , Kolkata      4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches

