

# ***CBDT's circular denying deduction on 'freebees' given to medical professionals by pharmaceutical companies is violation of MCI Regulations***

February 23, 2018

## ***In brief***

In a recent decision,<sup>1</sup> the Pune bench of the Income-tax Appellate Tribunal (Tribunal) observed that the circular<sup>2</sup> issued by Central Board of Direct Taxes (CBDT), denying the claim of freebees given to medical practitioners as expenses, was enlarging the scope of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 read with subsequent circular<sup>3</sup> issued by Medical Council of India (MCI).

The Tribunal has held that the CBDT's circular is without any enabling notification or circular of the MCI and violates the MCI Regulations. Hence, held that pharmaceutical companies are outside the scope of circulars issued by the MCI.

## ***In detail***

### ***Facts***

- The taxpayer is a pharmaceutical company engaged in the manufacture of generic drugs.
- The taxpayer had incurred certain sales promotion expenses which included expenses incurred for providing gifts and other benefits to the medical practitioners.
- MCI through a circular<sup>3</sup> amended the MCI Regulations and imposed prohibition on medical practitioner and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from the pharmaceutical and allied health sector industries.
- The CBDT through a circular<sup>2</sup> clarified that freebees given to medical practitioners and their professional associations was in violation of the provisions of MCI Regulations and should be inadmissible under section 37(1) of the Income-tax Act, 1961 (the Act).
- The tax officer (TO) placed reliance on the aforesaid circulars and denied the claim of the taxpayer to the extent of gifts and other benefits provided to medical practitioners.
- On appeal, the first appellate authority upheld the TO's order.

### ***Issue before the Tribunal***

- Whether the circular issued by the MCI prohibiting the medical practitioners from taking any gift is applicable to pharmaceutical companies?
- Whether the circular issued by CBDT is consistent with the circular issued by MCI?

<sup>1</sup> ITA No. 1532/ PUN/ 2015

<sup>2</sup> Circular No. 5/ 2012 dated 1 August, 2012

<sup>3</sup> Circular of Medical Council of India dated 10 December, 2009

### ***Taxpayer's contentions***

- The taxpayer contended that the circular issued by the MCI does not indicate the violation of any code of conduct with respect to pharmaceutical industry (as donor).
- The circular issued by the CBDT expanding the scope of circular of MCI to pharmaceutical companies is not proper and unsustainable in law.
- The taxpayer relied on decisions<sup>4</sup> wherein it was held that pharmaceutical companies are outside the scope of the circular issued by the MCI, despite the CBDT circular roping-in pharmaceutical companies.
- Further, the taxpayer also contended that the circular issued by CBDT does not apply retrospectively.

### ***Revenue's contentions***

- The Revenue contended that the pharmaceutical companies giving gifts also violated the code of conduct set by the CBDT circular as well as by the

MCI.

- The Revenue also placed reliance on the decision of Himachal Pradesh High Court<sup>5</sup>.

### ***Tribunal's decision***

- The Tribunal noted that the issue was squarely covered by the decisions relied on by the taxpayer.
- The Tribunal observed that in the absence of a specific mention about the applicability of the circular to pharmaceutical companies, it was quite apparent that the MCI Regulations were meant to be followed and adhered by medical practitioners/ doctors alone.
- The Tribunal also observed that if a pharmaceutical company was not prohibited from giving freebies to medical practitioners, then the provisions of section 37(1) of the Act, could not be applied to it.
- The MCI has itself admitted before the Delhi High Court<sup>6</sup> that its Regulations have

jurisdiction to take action only against medical practitioners and not against the healthcare sector industry.

- Circulars issued by the CBDT must confirm the tax laws and provide administrative relief or clarify the provisions of law, and cannot impose a burden on the taxpayer.

### ***The takeaways***

- The Tribunal reaffirms that the pharmaceutical companies are outside the ambit of circular of CBDT.
- Expenses incurred by pharmaceutical companies in providing freebies to medical practitioners are not subject to disallowance under section 37(1) of the Act.
- CBDT cannot impose a new burden by enlarging the scope of a different regulation passed under a different law.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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<sup>4</sup> 163 ITD 10 (Mum. ITAT) and 89 taxmann.com 249 (Mum. ITAT)

<sup>5</sup> CWP No. 10793 of 2012 dated 26 December, 2012

<sup>6</sup> WPC 1334 of 2013 dated 10 January, 2014

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