

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 351/JPR/2022  
निर्धारण वर्ष/Assessment Years : 2013-14

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| Deputy Commissioner of Income-tax,<br>Circle-01,<br>Jaipur. | बनाम<br>Vs. | M/s Curosis Healthcare Private Limited,<br>Basement, 86 Muskan Residency,<br>Indraprasth, Colony Vaishali<br>Nagar, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AA ECC 6210 D       |             |   |
| अपीलार्थी / Appellant                                       |             | प्रत्यर्थी / Respondent   |

निर्धारिती की ओर से / Assessee by : Shri S. L. Poddar (Adv.)  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 31/01/2023  
उदघोषणा की तारीख / Date of Pronouncement : 14/02/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the revenue is directed against the order of the Id. CIT(A), National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] dated 25.07.2022 for the AY 2013-14.

2. The revenue has raised the following grounds: -

*“1. Whether under the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 53,742/- made by disallowing Computer Gift Expenses of Rs. 24,900/- and other gift expenses of Rs. 28,842/- debited in the assessee’s P & L A/s under the head sales promotion expenses.”*

*2. Whether under the facts and the circumstances the case, the Ld. CIT(a) has erred in deleting the addition of Rs. 1,51,61,950/- made by disallowing various expenses incurred by the assessee on account of sales promotion and business promotion debited in the P&L a/c.”*

*The Appellant craves the right to amend alter or add to any of the grounds of appeal given below.”*

3. The fact as culled out from the records is that the assessee company M/s Curosis Healthcare Pvt. Ltd. filed its return of income for the year under consideration declaring total income of Rs. 49,81,330/- on 29.09.2013. Further, the case was selected for scrutiny assessment and accordingly, assessment order u/s 143(3) of the IT Act, 1961 was passed on 22.01.2016. The assessee is mainly engaged in the business of pharmaceuticals goods and sells the same through the dealer distribution network and the stockiest at the ground level. The case was re-opened after recording the reasons and taking administrative approval from competent authority and accordingly, notice u/s 148 of the Act had been issued on 26.03.2018 and duly served upon the assessee. In response, the assessee filed submission on 03.05.2018 stating that the assessee filed return of income against the notice u/s 148 of the Act declaring total income of Rs. 49,81,330/- on 24.04.2018 and requested to furnish reasons recorded for issuing notice u/s 148 of the Act.

3.1 The reasons recorded for issuing notice u/s. 148 of the Act has been provided on 18.08.2018. The notice u/s. 142(1) of the Act annexing questionnaire has also been issued on 18.08.2018 fixing the date for furnishing

details on 27.08.2018. Further, the AR of the assessee filed objection against reasons recorded for re-opening the case on 05.09.2018. Accordingly, order against objections to issuance of notice u/s. 148 of the Act has been passed on 13.09.2018. Since, the assessee did not file any submission, therefore, notice u/s. 142(1) of the Act annexing reminder letter has been issued on 13.09.2018 fixing the date for furnishing submission on 18.09.2018. The ld. AR of the assessee filed submission dated 03.12.2018. From the details so submitted by the assessee ld. AO found that the assessee claimed sales promotion expenses of Rs. 1,58,54,254/- and debited the same in profit & loss account. The ld. AO noticed that in most of the case, the assessee could not produce bills/ vouchers of the sales promotion expenses so debited in profit & loss account. The ld. AO further observed that the assessee gifted the items as incentive then TDS should have been made thereon u/s. 194H of the Act. But the assessee failed to made TDS thereon. Based on that observation the ld. AO concluded that the assessee gifted the chin, Kada, Gold & silver jewellery to various doctors or touts for soliciting admission in Nursing Home or Hospital which are completely prohibited as per CBDT's circular no. 05/2012 dated 01.08.2012 and also as per provision of section 37 of the Act. Based on these observations the ld. AO made addition of Rs. 53,742/- being the amount of computer gift and other gifts and Rs. 1,51,61,950/- out of various expenses claimed by the assessee on account of sales promotion and business promotion debited to profit and loss account.

4. Being aggrieved, the assessee carried the matter in appeal before the ld CIT/NFAC and his relevant findings at para 5.1.1 to 5.2.4 is reproduced here in below:-

“5.1 Ground no. 3 & 4 are challenging the addition of Rs. 1,51,61,950 on account of disallowance of various expenses. All these expenses were found to have been debited to P & L account but in absence of supporting documents, the Ld. AO proceeded to disallow the same and make the related additions as detailed in para no. 2.1 supra of this Appeal Order. These grounds are now adjudicated as under-

5.1.1 The Ld. AO discussed the related addition in Para 7 of the impugned order dated 12.12.2018. The discussion is as under:

7. It has been noticed that the assessee claimed various expenditure out of sales promotion expenses and took plea that such expenditure was incurred towards medical dealers. The detailed discussion is made in forthcoming paras.

Hotel Stay:-

On examination of other details of sales promotion expense, it has been noticed that the assessee debited expenses of Hotel Stay of Rs. 1,17,1477 in P&L account. But, the assessee completely failed to produce Ledger account, bills/vouchers of the expenditure. The assessee only took plea that the expenditure of hotel stay was incurred for the purpose of business. But the assessee did not furnish the details of guests, details of hotels, purpose of stay and why the assessee had incurred such expenditure. Further, it is quite possible to incur such expenditure towards Doctors or touts for soliciting admission in Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards hotel stay and incurred expenditure towards medical dealers has not been discharged by the assessee, therefore, in view of the above and as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act, the expenditure of hotel stay of Rs. 1,17,1477- is disallowed and added back to the total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate

particulars of income, therefore, the Penalty proceedings u/s 27100(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

(A)-Addition of Rs 1,17,147/-)

Gold: -

7.2 On examination of other details of sales promotion expense, it has been noticed that the assessee debited expenses of Gold of Rs. 1,27,08,275/- in P&L account. In response, notice u/s 142(1) of the Act annexing show cause has been issued on 30.11.2018. In response, the AR of the assessee

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furnished details of Gold coin having weighted of 4280.48 Gms and only furnished the name of party to whom the gold coin given. But, the complete details, i.e. Postal address, PAN, computation of income, return of income & etc. of so called parties was not provided. Since, the assessee claimed as expenditure and debited the same in P&L account, therefore, the worth of gift items should be income of so called parties and the so called parties should have to disclose the same as income from other sources in their return of income for the consideration. Further, on examination of bills/vouchers so produced by the assessee, it has been noticed that the assessee purchased jewellery from M/s Sharda Ornaments, the details of such bills are hereunder: -

- i. Vide Invoice No. 2374 dated 07.09.2012, the assessee purchased jewellery amounting to Rs. 2,93,6837-weighted quantity 101.270 Gms.
- ii. Vide Invoice No. 2250 dated 21.06.2012, the assessee purchased jewellery amounting to Rs. 2,21,15 57-weighted quantity 80.420 Gms.

iii. Vide Invoice No. 2242 dated 15.06.2012, the assessee purchased jewellery amounting to Rs. 2,76,1287-weighted quantity 100.410 Gms.

iv. Vide Invoice No. 2378 dated 10.09.2012, the assessee purchased jewellery amounting to Rs. 2,04,5677-weighted quantity 69.450 Gms.

The assessee purchased jewellery from M/s Sharda Ornaments, the details of such bills are hereunder..

1. Vide Invoice No. 2379 dated 20.10.2012, the assessee purchased SET KDM amounting to Rs. 1,99,5007-weighted quantity 65.00 Gms.

ii. Vide Invoice No. 2355 dated 15.10.2012, the assessee purchased "CHAIN" amounting to Rs. 1,98,5007-weighted quantity 65.110 Gms. DEPA

iii. Vide Invoice No. 2374 dated 19.10.2012, the assessee purchased KADE-2 KDM amounting to Rs. 1,979,5007- weighted quantity 64.270 Gms.

iv. Vide Invoice No. 1683 dated 17.05.2012, the assessee purchased CHUDI 4 SET1 916 amounting to Rs. 4,80,0007-weighted quantity 173.290 Gms.

v. Vide Invoice No. 3087 dated 23.03.2013, the assessee purchased 1 SET 916 amounting to Rs. 1,99,3807-weighted quantity 67.760 Gms.

The assessee purchased jewellery from M/s Gomati Ornaments, the details of such bill are hereunder: -

1. Vide Invoice No. 002 dated 23.01.2013, the assessee purchased Gold Ornaments amounting to Rs. 4,95,994/- weight quantity 157.960 Gms.

ii. Vide Invoice No. Oil dated 07.02.2013, the assessee purchased Gold Omaments amounting to Rs. 2,56,33 1/-weighted quantity 94,200 Gms.

iii. Vide Invoice No. 012 dated 11.02.2013, the assessee purchased Gold Omaments amounting to Rs. 2,13,4207-weighted quantity 70.250 Gms.

iv. Vide Invoice No. 014 dated 15.02.2013, the assessee purchased Gold Omaments amounting to Rs. 4,96,8707-weighted quantity 161.060 Gms,

v. Vide Invoice No. 022 dated 25.02.2013, the assessee purchased Gold Omaments amounting to Rs. 4,97.6137-weighted quantity 170,650 Gms.

vi. vide Invoice No. 025 dated 27.02.2013, the assessee purchased Gold Omaments amounting to Rs. 4,97,0007-weighted quantity 167.630 Gms.

vii. Vide Invoice No. 032 dated 18.03.2013, the assessee purchased Gold Ornaments amounting to Rs. 4,94,6757-weighted quantity 169.700 Gms.

viii. Vide Invoice No. 034 dated 20.03.2013, the assessee purchased Gold Ornaments amounting to Rs. 7,46,7047-weighted quantity 253. 1700 Gms.

ix. Vide Invoice No. 016 dated 18.02.2013, the assessee purchased Gold Ornaments amounting to Rs. 4,49,9807- weighted quantity 151.000 Gms.

The assessee purchased jewellery from M/s Shri Hari Jewellers, the details of such bills are hereunder: -

i. Vide Invoice No. 180 dated 19.10.2012, the assessee purchased Gold Ornaments amounting to Rs. 4,98,0007-weighted quantity 162.90 Gms.

ii. Vide Invoice No. 183 dated 22.10.2012, the assessee purchased Gold Ornaments amounting to Rs. 4,93,4357-weighted quantity 162.84 Gms.

iii. Vide Invoice No. 185 dated 23.10.2012, the assessee purchased Gold amounting to Rs. 4,96,7417-weighted quantity 162.590 Gms.

iv. Vide Invoice No. 218 dated 29.11.2012, the assessee purchased Gold amounting to Rs. 5,03,3527-weighted quantity 165.03 Gms.

v. Vide Invoice No. 234 dated 05.12.2012, the assessee purchased Gold Ornaments amounting to Rs. 5,003084/-weighted quantity 162.63 Gms.

vi. Vide Invoice No. 269 dated 15.01.2013, the assessee purchased Gold Ornaments amounting to Rs. 4,99.7127-weighted quantity 164.10 Gms.

The assessee purchased jewellery from M/s Nagpal Jewellers, the details of such bills are hereunder.

- i. Vide Invoice No. 945 dated 05.03.2013, the assessee purchased Gold Jewellery amounting to Rs. 2,71,0007-weighted quantity 94.00 Gms.
- ii. Vide Invoice No. 499 dated 04.06.2012, the assessee purchased Gold Jewellery amounting to Rs. 1,53,0007-weighted quantity 63.00 Gms.
- iii. Vide Invoice No. 516 dated 28.09.2012, the assessee purchased Gold Jewellery amounting to Rs. 1,98,7007-weighted quantity 68.00 Gms.
- iv. Vide Invoice No. - dated, the assessee purchased Gold and Silver Ornament amounting to Rs. 2,98,2507-weighted quantity 55.500 Gms.
- v. Vide Invoice No.- dated, the assessee purchased Gold Jewellery amounting to Rs. 3,96,0007- weighted quantity 130.50 Gms:
- vi. Vide Invoice No. dated, the assessee purchased Silver Jewellery amounting to Rs. 88,5007- weighted quantity 1500.00 Gms.
- vi. Vide Invoice No.-dated, the assessee purchased Gold Omaments amounting to Rs 2,37.0007- weighted quantity 80.00 Gms.

Further, it is pertinent to mention here that various bills/vouchers have been produced by the assessee which are discussed supra and on examination of the same, it has been noticed that the produced bills/vouchers belong to purchases of Chain, Kada & various Jewellery Items whereas the assessee provided the list of Gold coin. Both are contradicting to each other and therefore, the details of expenditure of Gold are not justified. The assessee is only trying to distract from the facts of the case as details of gold coin and bills/vouchers are contradicting to each other. Further, it is worthwhile to mention here that if the assessee gifted the items as incentive then TDS should be made by the assessee thereon. In this regard, notice u/s 142(1) of the Act annexing show cause has been issued on 30.11.2018. In response, the AR of the assessee filed submission on 03.12.2018. The main content of the submission is produced hereunder.

"The incentive is given to the dealers/stockiest based upon their performance

viz. on achieving the sales target, promotion of new product launches. As regarding your observation regarding deduction of TDS on the incentive paid, no tax at source has been deducted as the same is not required.

I have gone through the submission so made by the assessee and found that the assessee is only trying to distract from the facts of the case. One side the assessee furnished details of Gold coin distributed among the dealer whereas on the other hand the assessee produced bills of gold ornaments, silver ornaments, chain, kada, etc. Further, if the assessee gifted the items as incentive, then TDS should have been made thereon u/s 194H of the Act and But, the assessee; also failed to made TDS thereon. Further, the details of parties, to whom such gold coin were provided by the assessee, have not been provided to this office. Thus, it is evident that the assessee gifted the chain, Kada, gold & silver jewellery to various Doctors or touts for soliciting admission in Nursing Home or Hospital, which are completely prohibited as per CBDT's Circular No. 05/2012 dated 01.08.2012 and also as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards Gold has not been discharged by the assessee and the assessee has always lying about facts of the case, therefore, in view of the above and as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act, the expenditure claimed towards "Gold" of Rs. 1,27,08,275/- is disallowed and added back to total income of

the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

[(B)- Addition of Rs. 1,27,08,275/-]

Product Promotion: -

7.3 On examination of other details of sales promotion expense, it has been noticed that the assessee debited expenses of Product Promotion of Rs. 65,392/- in P&L account. But, the assessee completely failed to produce Ledger account, bills/vouchers of the expenditure. The assessee only took plea that the expenditure of hotel stay was incurred for the purpose of business. But the assessee did not furnish the details of products of promotion and why the assessee had incurred such expenditure. Further, it is quite possible to incur such expenditure towards Doctors or touts for soliciting admission in Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards product promotion and incurred expenditure towards medical dealers has not been discharged by the assessee, therefore, in view of the above and as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act, the expenditure of Product Promotion of Rs. 65,392/- is disallowed and added back to the total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

[(C)-Addition of Rs. 65,392/-]

Shirts/Pants for field staff and Retailers: -

7.4 On examination of other details of sales promotion expense, it has been noticed that the assessee debited expenses towards "Shirts/Pants for field staff and Retailers" of Rs. 4,61,524/- in P&L account. In response, notice u/s 142(1) of the Act annexing show cause has been issued on 30.11.2018. In response, the AR of the assessee to produce a few bills/vouchers, but, the items of shirts/pant were gifted to whom has not been provided by the assessee. The assessee could also not establish the purpose of gift items. Whether it was gifted for the purpose of business or not and the same is allowable under the provisions of the Act. Further, it is quite possible to incur such expenditure towards personal or towards Doctors or towards touts for soliciting admission in Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards "Shirts/Pants for field staff and Retailers" has not been discharged by the assessee, therefore, in view of the above and as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act, the expenditure claimed towards "Shirts/Pants for field staff and Retailers" of Rs. 4,61,524/- is disallowed and added back to total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

[(D)-Addition of Rs. 4,61,524/-]

Conference:

7.5 The assessee claimed expenditure toward "Conference" of Rs. 28,500/-. But, the assessee could not produce any bills/voucher of expenditure of conference and could also not state that which types of conference was made and where the conference was made and made for which purpose. The assessee could not explain that which types of expenditure was incurred in conference. The assessee could not produce any authorized letter or any documentary for organizing the conference. Thus, it is quite possible to incurred such expenditure towards Doctors or towards touts for soliciting admission in Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards "Conference" has not been discharged by the assessee, therefore, in view of the above CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 the Act, the expenditure claimed towards "Shirts/Pants for field staff and Retailers" of Rs. 28,500/- is disallowed and added back to total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

((F)-Addition of Rs. 28,500/-1

Hospital Camp: -

7.6 The assessee claimed expenditure toward "Hospital camp" of Rs. 24,451/-. But the assessee could not produce any bills/voucher of expenditure of hospital camp and could also not state that which types of camp was made in hospital and for what purpose. The assessee could not explain that which types of expenditure was incurred in hospital camp and could not state in which hospital the camp was organized. The assessee could not produce any authorized letter of hospital for organizing the camp. Thus, it is quite possible to incurred such expenditure of Hospital camp towards Doctors or towards touts for soliciting admission hi Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards "Hospital Camp" has not been discharged by the assessee, therefore, in view of the above and as per CBDT's Circular No. 05/2012 dined 01.08.2012 & as per provisions of section 37 of the Act, the expenditure maimed towards "Hospital Camp" of Rs. 28,500/- is disallowed and added back to total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particulars of income.

[{G}Addition of Rs. 24,4517-]

Gift lo Retailers:

The assessee claimed expenditure toward "Gift lo Retailers" of Rs. 17,56,661/- Assessee could not produce Ledger account and bills/voucher of expenditure of Gift to Retailers and could also not state that which types of gift given to the retailers. The assessee could also not state that to whom the gift was given and for which purpose. The assessee could not explain that the expenditure was actually incurred or not. Further, the details of expenses have been examined and found that some usable items were purchased by the assessee. The details of such expenses are hereunder:-

- i. Purchases black berry mobile set amounting to Rs. 11,2067-on 20.10.2012:
- ii. Purchased Movie ticket on 21.10.2012

- iii. Cash Paid to GKB Optical for contact lens of Rs. 6.D007-;
- iv. Amount paid to Kanishka Jewellers on 11.11.2012.
- v. Purchased Apron of Rs. 33,7907- on 29.11.2012;
- vi. Purchased Blanket of Rs. 77.2257- on 22.12.2012;
- vii. Purchased Sweater of Rs. 2,3997-on 27.12.2012.
- viii. Amount of Rs. 4.2957- paid to Priyanka Fashion for designer suit on 03.02.2013,
- ix. Purchased mobile for gift on 20.02.2013.
- x. Amount paid to Pradal Resorts paid for doctors;
- xi. Amount paid to Spice Hotspot of Rs. 19,5007-ori 08.11.2012;
- xii. Cash paid to Reliance Fresh of Rs. 16,030 and Rs. 15,0007- for gift on 26.08.2012 and on 27.08.2012 respectively.

In absence of details of expenditure, bills/vouchers of "Gift to Retailers" expenditure, the expenses so debited in P&L towards "Gift to Retailers" of Rs. 17,56,661/- is not allowable to debit such expenditure: n P&L account. Thus, it is quite possible to incurred such expenditure of "Gift to Retailers" towards Doctors or towards touts for soliciting admission in Nursing Home or Hospital and the same is not allowable as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act. Since, the primary onus lies only over the assessee for proving the genuineness and correctness of the expenditure towards "Gift to Retailers" has not been discharged by the assessee. Therefore, in view of the above as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act, the expenditure claimed towards "Gift to Retailers" of Rs. 17,56,661/- is disallowed and added back to total income of the assessee for the year under consideration. Since, the assessee furnished inaccurate particulars of income, therefore, the Penalty proceedings u/s 271(1)(c) of the Act is hereby separately initiated for furnishing inaccurate particular, of income.

[(G)-Addition of Rs. 17.56,66/]

7.8 Total addition as per CBDT's Circular No. 05/2012 dated 01.08.2012 & as per provisions of section 37 of the Act of the Act so discussed supra is as under. -

(A)+(B)+(C)+ (D)+(E)+(F) + (G)=1,17,147+1,27,08,275 +65,392+4,61,524 + 28,500+24,451 +17,56,681-1.51.61,950/-

5.1.2 In this regard, out of submission of the appellant (reproduced entirely in Para no 4 supra), following points being relevant for adjudication of the impugned addition of Rs. 1,51,61,950 are as under:

1. That, it was submitted that during the course of assessment proceedings the appellant submitted vouchers regarding purchase of gold items from M/s Sharda Ornaments, Gombi Ornaments, Shri Hari Jewellers and Nagpal Jewellers:
2. That, it was the case of the appellant that the gold items purchased from these parties were given to dealers keeping in view their statistics with reference to their performance in achieving targets of Sales. However, the Ld. AO rejected the plea of the appellant and disallowed the entire expenditure of Rs. 1,51,61,950,
3. That, it was submitted that the Ld. AO disallowed the expenditure on the basis that the appellant had the first claimed to have distributed gold coins whereas invoices/vouchers produced during assessment proceedings were of purchase of gold jewellery.

4. That, the Ld. AO disallowed the expenditure on the basis that appellant did not furnish name of persons and their PAN to whom the items were claimed to have been distributed.

5. That, the Ld. AO disallowed the expenditure on the basis that there should have been TDS on giving of such gift but he found that no such TDS was made.

6. That, in the opinion of the Ld. AO the appellant had gifted gold jewellery to various doctors stouts etc. to solicit new customers/ patients and not to dealers and stockists

7. That, the appellant and/or its Ld. A/R had inadvertently submitted the fact of distribution of gold coins whereas in fact gold jewellery was given away. The fact of incurring of expenditure was not denied by the Ld. AO.

8. That, the Ld. AO had not disputed the vouchers of purchase of gold jewellery given to various dealers. The Ld. AO had no material on record to hold that the gold jewellery was given to doctors or touts.

9. That, the expenditure had been disallowed purely on assumption and presumption. In the facts and circumstances of the case the CBDT circular no. 05/2012 dated 01.08.2012 were not at all attracted. The expenditure had been disallowed wrongly. If the appellant had failed to provide details of persons to whom gold jewellery was distributed even then it was established that expenditure was incurred. In the circumstances the Ld. AO erred in disallowing the entire expenditure.

10. That, in relation to product Promotion expenses of Rs. 65,392; the Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards product promotion the same deserves to be allowed.

11. That, in relation to expenses of Rs. 461524 on Shirts, Pants for field staff; the Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards providing shirts and pants to staff. However, the Ld. AO was not satisfied with the purpose for which these gifts were made. The appellant explained that it was to promote the sales that the expenditure was incurred.

12. That, in relation to Conference expenditure of Rs. 28,500; The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards conference but the supporting vouchers could not be produced as the same were not traceable.

13. That, in relation to expenses of Hospital Camp of Rs. 24,451: The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or

hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards hospital camp. But the appellant could not produce the supporting vouchers as the same were not traceable.

14. That, expenses in relation to Rs. 17,56,661 given as Gift to retailers: The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards gift to retailers.

15. That, in the assessment order the Ld. AO himself had mentioned that appellant had purchased various items such a blackberry mobile sets, movie tickets, aprons, blankets sweaters, designer suits etc. etc. Apparently, these items were purchased for gifts. Giving such gifts on various occasions and festivals and birthdays was very usual in the line of business. Such gifts were given to staff. field persons and persons who have helped in promoting the business.

16. That, the expenditure was "wholly and exclusively" for purchase of business and deserve to be allowed. It was not the case of the Ld. AO that expenditure was not incurred. And it is also not the case of the Ld. AO that the expenditure was of personal nature. In view of this it was submitted that the expenditure of Rs. 17,56,661 deserves to be allowed.

5.1.3 All the facts and circumstances related to the impugned addition of Rs. 1,51,61,950 are duly considered. The appellant had failed to provide details of persons to whom gold jewellery was distributed even then it was established that expenditure was incurred. In the circumstances the Ld. AO erred in disallowing the entire expenditure as the expenditure had been disallowed purely on assumption and presumption. The CBDT circular no. 05/2012 dated 01.08.2012 was not at all attracted. The expenditure had been disallowed wrongly. expenditure had been disallowed purely on assumption and presumption. Ld. AO had no material on record to hold that the gold jewellery was given to doctors or touts. fact of incurring of expenditure was not denied by the Ld. AO. The fact of incurring of expenditure was not denied by the Ld. AO.

5.1.4 It was also submitted that the Ld. AO made the addition as the appellant had failed to provide details of persons to whom gold jewellery was distributed even then it was established that expenditure was incurred. In the circumstances the Ld. AO erred in disallowing the entire expenditure.

5.1.5 In the light of such facts, I am afraid; there is no such occasion to confirm action of ld. AO in making the impugned addition of Rs. 1,51,61,950/- and relief has to be given to the appellant individual as he is entitled for the same. The amount of addition being only awild guess and that too without any basis is not confirmed and is directed to be deleted. Therefore, Ground No. 3 & 4 are allowed.”

5. The Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

“The assessee is a private limited company and is engaged in the business of pharmaceuticals goods and sells the same through the dealer distribution network and the stockiest at the ground level. Return of income for the year under consideration declaring total income of Rs. 49,81,330/- was filed on 29.09.2013. The case was selected for scrutiny and accordingly, assessment order u/s 143(3) of the IT Act, 1961 was passed on 22.01.2016 accepting the returned income. Subsequently proceedings u/s 147/148 were initiated on the basis of wrong audit para and the Learned Assessing Officer completed the assessment u/s 147/143(3) of the Income Tax Act, 1961 on 12.12.2018 determining income of Rs. 2,01,97,020/- inter-alia making the following additions: -

- (i) Addition of Rs. 53,742/- by disallowing the Computer Gift Expenses of Rs. 24,900/- and Others gift expenses of Rs. 28,842 under the head sales promotion expenses with reference to provisions of section 69C.
- (ii) Addition of Rs. 1,51,61,950/- by disallowing the expenses incurred by the assessee on account of sales promotion and business promotion.

Aggrieved with the order of the Learned Assessing Officer the assessee preferred appeal before the learned CIT(A). The Learned CIT(A) has deleted all the additions made by the Learned AO.

Aggrieved with the order of the Learned CIT(A) the Revenue has preferred appeal before your honour. With this background the individual grounds of appeal are discussed as under: -

Regarding first addition of Rs. 53,742/- by disallowing the Computer Gift Expenses of Rs. 24,900/- and others gift expenses of Rs. 28,842 under the head sales promotion expenses made by the Learned Assessing Officer under section 69C of the Act. These expenses are claimed in P&L A/c and the provisions of section 69C are not applicable as 69C is applicable in a case where the source of expenditure is not explained. In the case of the assessee it is not the case of the Learned Assessing Officer that assessee failed to explain the source of expenditure. On the contrary the Learned Assessing Officer has disallowed the expenditure on the ground that supporting vouchers were not produced. The payment of both the expenses were made by crossed account payee cheque duly reflected in the bank account of the assessee. The addition has been made by the Learned Assessing Officer has on assumption and presumption.

The Learned CIT(A) has deleted this addition by mentioning that the addition being only a result of guesswork and that too without any basis is not confirmed and is directed to be deleted. Your honour is requested to confirm the action of the Learned CIT(A) in deleting the addition.

Regarding second addition of Rs. 1,51,61,950/- made by disallowing various expenses incurred by the assessee on account of sales promotion and business promotion debited in the P&L A/c. These expenses are related to purchase of gold items from M/s Sharda Ornaments, Gomti Organments, Shri Hari Jeweller and Nagpal Jewellers. The gold items purchased from these parties were given to dealers

and stockiest with reference to their performance in achieving targets of sales. Vouchers have been produced before the Learned Assessing Officer.

The learned AO has observed that the gold items and gold jewellery given to various distributors, dealers and stockiest is a kind of gift and TDS provisions are applicable and the assessee has not deducted TDS. Therefore, the learned AO has himself accepted that these items of gold were given to the business partners and he accepted the genuineness of the transactions and incurring of expenditure but since the TDS was not deducted, therefore he disallowed this expenditure.

The expenditure incurred by the assessee are not for gift or in the nature of gift. The learned AO further mentioned on page 9 of the assessment order that the assessee gifted the gold items to various doctor or touts for soliciting admission in nursing home or hospital which are completely prohibited as per CBDT circular no. 5/2012 dated 01.08.2012 and also as per provisions of section 37 of the Act.

This was sales promotion expenses which was given to various distributors and dealers for achieving the sales target on which TDS provisions are not applicable.

The issue that the expenses wholly and exclusively incurred by a pharmaceutical company in the normal course of its business towards gifts, travel facility, conference expenses or similar freebies to medical practitioners or their professional associations would not be hit by the „Explanation 1“ to Sec. 37 of the Act, is covered by the order of a coordinate bench of the Tribunal i.e ITAT “A” Bench, Mumbai in the case of Aristo Pharmaceuticals Pvt. Ltd. Vs. ACIT (ITA No. 6680/Mum/2012, dated 26.07.2018).

So even otherwise if the gifts are distributed to the medical practitioners of doctors it also cannot be disallowed.

The Learned CIT(A). After considering the submission of the assessee has deleted the addition made by the Learned Assessing Officer on the ground the Ld. AO erred in disallowing the entire expenditure as the expenditure had been disallowed purely on assumption and presumption. The CBDT circular no. 05/2012 dated 01.08.2012 was not at all attracted because the circular is applicable only when the gifts are made to medical practitioners. In our case we have not given any gift or any freebies to any doctor or medical practitioner. The expenses were incurred wholly and exclusively for the purpose of achieving sales target by the super stockiest and distributors of products of the assessee company. The learned AO did not make any enquiry in this regard from any of the person that whether this expenses was incurred for giving gifts to doctors or medical practitioners. The assessee submitted complete list of the dealers and target achieved by them. The assessee company has also submitted the complete details of various schemes launched by the assessee company. Submission of all these documents undoubtedly proved that the gifts/gold items and other expenditures were incurred during the course of sales promotion for achieving targets by the dealers.

There is nothing on record which prove or suggest that the gifts were given to doctors or medical practitioners. The learned CIT(A) has given very categorical finding in para 5.1.3 and para 5.1.4 while deleting the addition of Rs. 1,51,61,950/- that there is

no evidence on record that this expenditure was incurred for giving gifts to medical practitioners, therefore he deleted the addition of Rs. 1,51,61,950/-.

Likewise in para 5.2.4 he deleted the addition of Rs. 53,742/- because it is again on guess work. Your honour is requested to confirm the action of the Learned CIT(A) in deleting the addition.”

6. The Id. AR of the assessee in addition to the written submission submitted that the allegation made by the revenue are without any basis and the averments made are general in nature. There is no specific finding even though the details of the payee submitted and it is also admitted in the status report of the AO submitted before the bench. None of the payee or beneficiaries are in the list of parties to whom the freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 is provided or proved by the assessing officer. Thus, since there is no violation of board circular and no finding is recorded in the status report the claim of the assessee is fully supported by bills and vouchers and nothing adverse has been found by the lower authorities and thus, the claim of the assessee squarely covered under section 37(1) of the Income Tax Act. Thus, both the grounds raised by the revenue has no merits and are required to be dismissed.

7. The Id DR is heard who has relied on the findings of the assessing officer and has also submitted the comments of the Id. AO as submitted vide his letter dated 09.01.2023. The content of the report of the Id. AO is reproduced here in below ;

“Sub- Appellate proceedings before Hon'ble ITAT Bench, Jaipur in 351/JPR/2022 in the case of M/s Curosis Healthcare Pvt Ltd (PAN: AAEECC6210D) for AY 203-14-reg-

Your letter No Addl. CIT(DR)/ITAT/JPR/2022-23/492 dated 06.01.2023

Kindly refer to the subject mentioned above.

2. In this regard you have sought details whether expenses disallowed were verified by the AO during assessment proceedings. Expense wise report is as follows:

1. Computer gift expense and Other gift expense of Rs 53,742/-: As per assessment order the assessee did not provide any ledger account, bills/vouchers of purchases of these gifts and details of persons to whom these gifts were given

2. Sales promotion expenses of Rs. 1.51.61.950/-:

A. Hotel Stay- As per assessment order, the assessee has incurred expenses of Hotel Stay of Rs. 1,17,1477 in P&L account. But, the assessee completely failed to produce Ledger account, bills/vouchers of the expenditure. The assessee did not furnish the details of guests, details of hotels, purpose of stay and why the assessee had incurred such expenditure.

B. Gold- As per assessment order. The assessee has incurred expenses of Rs 1,27,08,275/- on account of Gold in P&L account. During assessment proceedings, the assessee furnished details of Gold coins weighing 4280.48 Gms and only furnished the name of party to whom the gold coin was given. But complete details, ie., Postal address, PAN, computation of income, return of income & etc. of so called parties was not provided.

Further. AO has also observed that on going through bills/vouchers produced by the assessee during assessment proceedings, it was noticed that the produced bills/vouchers belong to purchases of Chain, Kada & various Jewellery Items whereas the assessee provided the list of Gold coin. Both are contradicting to each other and therefore, the details of expenditure of Gold are not justified.

C. Product Promotion Expense- As per assessment order, The assessee has debited expenses of Product Promotion of Rs. 65,392- in P&L account. But, the assessee completely failed to produce Ledger account, bills/vouchers of the expenditure. The assessee did not furnish the details of products of promotion and why the assessee had incurred such expenditure.

D. Shirts/Pants for field staff and Retailers: - As per assessment order. The assessee has debited expenses towards "Shirts/Pants for field staff and Retailers" of Rs. 4,61,524/-in P&L account. The assessee did not provide details of person to whom these items of shirts/pant were gifted. assessee could also not establish the purpose of gift items.

E. Conference: As per assessment order. The assessee has debited expenditure toward "Conference" of Rs. 28.500/- But, the assessee could not produce any bills/voucher of expenditure related to conference. The assessee could not furnish any other detail such as place of conference, purpose of conference etc. Further the assessee could not produce any authorized letter or any documentary evidence for organizing the conference.

F. Hospital Camp As per assessment order. The assessee has debited expenditure toward "Hospital camp" of Rs. 24.451/-. But the assessee could not produce any bills/voucher of expenditure related to hospital camp and could also not state that which types of camp was made in hospital and for what purpose. The assessee could not even state in which hospital the camp was organized. No authorized letter of hospital for organizing the camp was provided during assessment proceedings.

G. Gift to retailers - As per assessment order. The assessee has debited expenditure toward "Gift lo Retailers" of Rs. 17,56,661/ However the assessee could not produce Ledger account, bills/voucher of expenditure related to Gift to Retailers and also could not provide details of gifts given to retailers. No detail of retailers to whom gift was given by the assessee or the purpose of gift was furnished. In absence of details of expenditure, bills/vouchers of "Gift to Retailers" expenditure, the expenses so debited in P&L towards "Gift to Retailers" of Rs. 17,56,661/- is not allowable.

3. It may also be noted that these facts are also mentioned by the Assessing Officer in assessment order passed u/s 147/143(3) dated 12.12.2018.”

The Id. DR also submitted that there is disallowance of sales promotion where in huge expenditure has been claimed where in required details as called for has not been submitted. Assessee has not submitted details of person who has stayed in the hotel. No details of the gold coin given and bills are of the jewellery items. He has based on these relied upon the report of the AO and assessment order.

8. In the rejoinder the Id. AR of the assessee submitted that in the report of the AO he has not uttered a single word that the items that has been given to doctors and his denial of claim of expenditure purely on the CBDT circular and since there is not contrary finding by the Id. AO no disallowance can be made as there is no contravention of the provision of section 37(1) the expenditure rightly deleted by the Id. CIT(A).

9. We have heard the rival contentions and perused the material placed on record and have also considered the various decisions relied upon. The bench has noted in the ground no. 1 the revenue has challenged the action of the Id. CIT(A) giving relief to the assessee for an amount of Rs. 53,742/- being the computer gift of Rs. 24,900/- and other gift expenses of Rs. 28,842/-. In Ground no. 2 revenue has challenged the action of the Id. CIT(A) deleting the addition of Rs. 1,51,61,950/- being the total of various sales promotion and business promotion expenses. Thus, the total head wise expenditure which is under dispute comes to Rs. 1,52,15,692/- which the revenue has challenged that the same is required to be sustained based on the finding of the Id. AO. The detailed breakup of the expenses under dispute is thus listed herein below for the sake of clarity of the matter:-

| <i>Sr. No.</i> | <i>Summary of sales promotion</i>                 | <i>Amount (In Rs.)</i> |
|----------------|---|------------------------|
| 1.             | <i>Bags for field staff</i>                       | <i>16,825/-</i>        |
| 2.             | <i>New Year Calendars</i>                         | <i>75,000/-</i>        |
| 3.             | <i>Computer Gift</i>                              | <i>24,900/-</i>        |
| 4.             | <i>Conference</i>                                 | <i>28,500/-</i>        |
| 5.             | <i>Gift to field Staff</i>                        | <i>52,109/-</i>        |
| 6.             | <i>Hospital Camp</i>                              | <i>24,451/-</i>        |
| 7.             | <i>Hotel Stay</i>                                 | <i>1,17,147/-</i>      |
| 8.             | <i>Gold</i>                                       | <i>1,27,08,275/-</i>   |
| 9.             | <i>Others</i>                                     | <i>28,842/-</i>        |
| 10.            | <i>Pens</i>                                       | <i>45,360/-</i>        |
| 11.            | <i>Printed Materials</i>                          | <i>4,48,268/-</i>      |
| 12.            | <i>Product promotion</i>                          | <i>65,392/-</i>        |
| 13.            | <i>Gift to retailers</i>                          | <i>17,56,661/-</i>     |
| 14.            | <i>Shirts/Panta for field staff and Retailers</i> | <i>4,61,524/-</i>      |
|                | <i>Total</i>                                      | <i>1,58,53,254/-</i>   |

9.1 As it is evident that out of total expenditure as listed here in above for an amount of Rs. 1,58,53,254/-, ld. AO made an addition of Rs. 1,52,15,692/- and thus, a sum of Rs. 6,37,562/- considered as allowable. The list of the expenditure allowed by the ld. AO in the assessment proceedings are thus separately listed here in below:

| <i>Sr. No.</i> | <i>Summary of sales promotion</i> | <i>Amount (In Rs.)</i> |
|----------------|-----------------------------------|------------------------|
| 1.             | <i>Bags for field staff</i>       | <i>16,825/-</i>        |
| 2.             | <i>New Year Calendars</i>         | <i>75,000/-</i>        |
| 3.             | <i>Gift to field Staff</i>        | <i>52,109/-</i>        |
| 4.             | <i>Pen</i>                        | <i>45,360/-</i>        |
| 5.             | <i>Print Materials</i>            | <i>4,48,268/-</i>      |
|                | <i>Total</i>                      | <i>6,37,562/-</i>      |

9.2 The bench also observed that while making the disallowance of Rs. 1,51,61,950/- being the total of various sales promotion and business promotion expenses, ld. AO heavily relied upon the CBDT's circular no.5/2012 dated 01.08.2012 and taken a view that as the expenditure is within the coverage of

that circular and thus, the claim of the assessee not considered as business expenditure under section 37(1) of the Act. Since, the revenue has challenged the expenditure of Rs. 1,51,61,950/- taking the shelter of circular no. 5/2012, the circular is required to be read with the nature of the business of the assessee. Thus, the circular is reproduced here in below:

**INADMISSIBILITY OF EXPENSES INCURRED IN PROVIDING FREEBEEES TO  
MEDICAL PRACTITIONER BY PHARMACEUTICAL AND ALLIED HEALTH  
SECTOR INDUSTRY**

CIRCULAR NO. 5/2012 [F. NO. 225/142/2012-ITA.II], DATED 1-8-2012

It has been brought to the notice of the Board that some pharmaceutical and allied health sector Industries are providing freebees (freebies) to medical practitioners and their professional associations in violation of the regulations issued by Medical Council of India (the 'Council') which is a regulatory body constituted under the Medical Council Act, 1956.

2. The council in exercise of its statutory powers amended the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (the regulations) on 10-12-2009 imposing a prohibition on the 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.

3. Section 37(1) of Income Tax Act provides for deduction of any revenue expenditure (other than those failing under sections 30 to 36) from the business Income if such expense is laid out/expended wholly or exclusively for the purpose of business or profession. However, the explanation appended to this sub-section denies claim of any such expense, if the same has been incurred for a purpose which is either an offence or prohibited by law.

Thus, the claim of any expense incurred in providing above mentioned or similar freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) of the Income Tax Act being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

4. It is also clarified that the sum equivalent to value of freebees enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources as the case may be depending on the facts of each case. The Assessing Officers of such medical practitioner or professional associations should examine the same and take an appropriate action.

This may be brought to the notice of all the officers of the charge for necessary action.

9.3 Upon careful consideration of the above circular and the rival submission placed before us and the finding of the Id. CIT(A) while allowing the claim of the assessee, we are of the considered view that the Id. CIT(A) has not erred in law and on facts while considering the claim of the assessee. The bench further noted from the report of the AO before us also while commenting on expenditure of Rs. 1,27,08,275/- has accepted that the fact that the assessee has submitted the name of the party to whom the gold coins were given. The Id. AO has given his comments on each expenditure but nowhere in the assessment order in the report before us that the benefit directly or indirectly given as freebies (freebies) to medical practitioners and their professional associations in violation of the regulations issued by Medical Council of India (the 'Council') which is a regulatory body constituted under the Medical Council Act, 1956. Once, the basis on which the addition made is not substantiated by the Id. AO in the assessment proceeding by any evidence contrary to the claim which is supported by bills and vouchers and that too of a manufacturing company where their books are subjected to audit. The Id. CIT(A) after evaluating the submission of the assessee considered the various aspect of the claim of the assessee and has given a reasoned finding that why the claim of the assessee is allowable. The same is again reiterated here in below:

5.1.2 In this regard, out of submission of the appellant (reproduced entirely in Para no 4 supra), following points being relevant for adjudication of the impugned addition of Rs. 1,51,61,950 are as under:

1. That, it was submitted that during the course of assessment proceedings the appellant submitted vouchers regarding purchase of gold items from M/s Sharda Ornaments, Gomti Ornaments, Shri Hari Jewellers and Nagpal Jewellers:
2. That, it was the case of the appellant that the gold items purchased from these parties were given to dealers keeping in view their statistics with reference to their performance in achieving targets of Sales. However, the Ld. AO rejected the plea of the appellant and disallowed the entire expenditure of Rs. 1,51,61,950,
3. That, it was submitted that the Ld. AO disallowed the expenditure on the basis that the appellant had the first claimed to have distributed gold coins whereas invoices/vouchers produced during assessment proceedings were of purchase of gold jewellery.

4. That, the Ld. AO disallowed the expenditure on the basis that appellant did not furnish name of persons and their PAN to whom the items were claimed to have been distributed.

5. That, the Ld. AO disallowed the expenditure on the basis that there should have been TDS on giving of such gift but he found that no such TDS was made.

6. That, in the opinion of the Ld. AO the appellant had gifted gold jewellery to various doctors stouts etc. to solicit new customers/ patients and not to dealers and stockists

7. That, the appellant and/or its Ld. A/R had inadvertently submitted the fact of distribution of gold coins whereas in fact gold jewellery was given away. The fact of incurring of expenditure was not denied by the Ld. AO.

8. That, the Ld. AO had not disputed the vouchers of purchase of gold jewellery given to various dealers. The Ld. AO had no material on record to hold that the gold jewellery was given to doctors or touts.

9. That, the expenditure had been disallowed purely on assumption and presumption. In the facts and circumstances of the case the CBDT circular no. 05/2012 dated 01.08.2012 were not at all attracted. The expenditure had been disallowed wrongly. If the appellant had failed to provide details of persons to whom gold jewellery was distributed even then it was established that expenditure was incurred. In the circumstances the Ld. AO erred in disallowing the entire expenditure.

10. That, in relation to product Promotion expenses of Rs. 65,392; the Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards product promotion the same deserves to be allowed.

11. That, in relation to expenses of Rs. 461524 on Shirts, Pants for field staff; the Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards providing shirts and pants to staff. However, the Ld. AO was not satisfied with the purpose for which these gifts were made. The appellant explained that it was to promote the sales that the expenditure was incurred.

12. That, in relation to Conference expenditure of Rs. 28,500; The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards conference but the supporting vouchers could not be produced as the same were not traceable.

13. That, in relation to expenses of Hospital Camp of Rs. 24,451: The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or

hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards hospital camp. But the appellant could not produce the supporting vouchers as the same were not traceable.

14. That, expenses in relation to Rs. 17,56,661 given as Gift to retailers: The Ld. AO had disallowed the expenditure stating that it was quite possible to have incurred such expenditure towards doctors or touts for soliciting admission in nursing home or hospital. Accordingly, expenditure was disallowed in view of CBDT Circular no. 05/2012 dated 01.08.2012. Apparently, the expenditure had been disallowed purely on assumption. The Ld. AO had no material in his possession to establish that the expenditure was incurred towards doctors and touts. In fact, the expenditure was incurred towards gift to retailers.

15. That, in the assessment order the Ld. AO himself had mentioned that appellant had purchased various items such as blackberry mobile sets, movie tickets, aprons, blankets sweaters, designer suits etc. etc. Apparently, these items were purchased for gifts. Giving such gifts on various occasions and festivals and birthdays was very usual in the line of business. Such gifts were given to staff, field persons and persons who have helped in promoting the business.

16. That, the expenditure was "wholly and exclusively" for purchase of business and deserves to be allowed. It was not the case of the Ld. AO that expenditure was not incurred. And it is also not the case of the Ld. AO that the expenditure was of personal nature. In view of this it was submitted that the expenditure of Rs. 17,56,661 deserves to be allowed.

The revenue has not controverted finding of the Id. CIT(A) by filing contrary submission or evidence. Thus, we see no fault in the detailed finding of the Id. CIT(A) while allowing the claim of the assessee for an amount of Rs. 1,51,61,950/- as the revenue has not established that there is violation of board circular as relied upon by the AO. Merely on presumption and assumption that circular will not be made applicable to the facts of the case when nothing contrary placed on record. In the light of these findings the ground no. 2 raised by the revenue fails and thus the same is dismissed.

10. As regards the ground no. 1 raised by the revenue the bench noted that the Ld. AO has made the addition u/s. 69C of the Act. The reasoning given by the Ld. AO while making the disallowance was that the assessee could not

produce any ledger account, bills/vouchers of purchase of gifts and could not state that to whom the computer gifted. As the ld. AO made the addition u/s. 69C, the provision of the relevant section is reiterated here in below

Unexplained expenditure, etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

11. Considering the facts of the case we are of the considered view that the primary condition to make the addition is not fulfilled, as here in this case the assessee has incurred the expenditure and has offered the explanation about the source of such expenditure the reasoning given by the ld. AO is against the provision of law. As in this case the ld. AO has not doubted the source of the expenditure the applicability of section 69C is not in accordance with the law. The ld. CIT(A) after considering the board circular and provision of law taken a considered view that the ld. AO has not placed no material on record to hold that the expenditure was not incurred and the source of the said expenditure is not explained by the assessee. The finding of the ld. CIT(A) on this issue is reiterated here in below:-

*“5.2.3 All the facts and circumstances related to the impugned addition of Rs. 53,742 are duly considered. The appellant had failed to provide details of persons to whom computer was gifted/other similar details in relation to expenditure of Rs. 28,842 debited to P&L account as, "Others" but it was argued that even then it was established that expenditure was incurred. In the circumstances, the Ld. AO erred in disallowing the entire expenditure as the*

*expenditure had been disallowed purely on assumption and presumption. The CBDT circular no. 05/2012 dated 01.08.2012 was not at all attracted. The expenditure had been disallowed wrongly. Ld. AO had no material on record to hold that expenditure was not incurred and therefore such denial by the Ld. A.O. for disallowing the entire expenditure was incorrect and bad in law and in the facts and circumstances of the case the addition was not sustainable both in law and in facts of the case.*

*5.2.4 In the light of such facts, I am afraid; there is no such occasion to confirm action of Ld. A.O. in making the impugned addition of Rs. 53,742 and relief has to be given to the appellant company as it is entitled for the same. The amount of addition being only a result of guesswork and that too without any basis is not confirmed and is directed to be deleted. Therefore, ground No. 2 is allowed.”*

12. Even in the report of the ld. AO before us he has stated that “ Computer gift expenses and other gift expenses of Rs. 53,742/- :- As per assessment order the assessee did not provide any ledger account, bills and vouchers of purchase of these gifts and details of persons to whom these gifts were given. Whereas the ld. AR of the assessee on this issue submitted that these expenses are claimed in profit and loss account and the provisions of section 69C is not applicable in the present case. The payment for these expenditure has been made by crossed account payee cheque and this fact is not disputed by the revenue. Thus, merely based on assumption and presumption no addition can be made. Even based on these facts ld. CIT(A) also considered the claim of the assessee accordingly. Thus, we see not fault in the detailed finding of the ld. CIT(A) while allowing the claim of the assessee for an amount of Rs. 53,742/- and revenue has not placed on contrary evidence or facts expressly demonstrating that why the claim is disallowable. Based on that observations

we are of the considered view that the ground no. 1 raised by the revenue fails and thus dismissed.

13. In the result, this appeal of the revenue stands dismissed.

Order pronounced in the open Court on 14/02/2023.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

( डॉ.एस.सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 14/02/2023.

**\*Ganesh Kr/ Santosh.**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- DCIT, Circle-01, Jaipur
2. प्रत्यर्थी / The Respondent- M/s Curosis Healthcare Private Ltd, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 351/JPR/2022 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar