



## Global Business Tax Alert Sharp Insights

Delhi Tribunal allows claim of expenditure on free samples given to doctors/ medical practitioners

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The Delhi Tribunal in the case of Eli Lilly & Co. (India) Pvt. Ltd. v ACIT [TS-680-ITAT-2015(DEL)] has allowed a claim of expenditure incurred on free samples given to doctors/medical practitioners<sup>1</sup>.

The assessee, engaged in the business of trading of formulations and marketing and selling of life saving drugs formulations, had incurred expenses towards distribution of free samples to doctors/medical practitioners.

The expenses towards distribution of free samples were disallowed by the Assessing Officer (AO) in view of CBDT Circular No. 5/2012 dated 01.08.2012 (Circular). The Circular had stated that the Indian Medical Council (IMC), *vide* the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, had imposed a prohibition on the medical practitioners and their professional associations from taking any gift, travel facility, hospitality, cash or monetary grant from the pharmaceutical and allied health sector industries. Accordingly, the AO held such expenses being prohibited by the law were not allowable under the Income-tax Act, 1961 (Act).

Before the Tribunal, the assessee contended that that such samples could not, in any manner, be said to be covered within the ambit of the term 'gift', much less conferring any benefit to such

doctors/ medical practitioners. The assessee contended that samples were distributed upon specific request being made by the practitioners and were not distributed voluntarily so as to influence the doctor's discretion of prescribing medicines to the patients. Moreover, such samples were used by the patients of the doctors and not by the doctor himself. With additional reference to IMC Regulations, the assessee argued that only freebies which conferred personal benefit to the medical practitioner directly could be considered in violation of the Medical Council's guidelines. Reference was also drawn from a Circular issued by Ministry of Chemicals & Fertilizers and the Drugs, Department of Pharmaceuticals and the provisions of Drugs and Cosmetics Act, 1945 which permitted distribution of free samples on fulfillment of certain conditions.

The assessee also placed reliance on the order of the Dispute Resolution Panel (DRP) for the immediately preceding assessment year which had permitted a deduction for such expenses.

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<sup>1</sup> We have not analysed any other issue covered in the appeal

The Tribunal, acknowledging that the order of the DRP for earlier assessment year had not been appealed by the tax authorities and applying the principle of consistency, allowed the deduction on expenses incurred on free samples. The Tribunal had also accepted the reliance of the DRP on the decision of the Supreme Court in the case of Eskayef Pharmaceuticals wherein it was explained that sample drugs are distributed in order to create awareness and thus same cannot be equated with publicity and sales promotion.

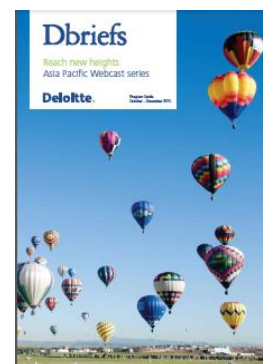
It may be noted that the validity of the Circular had been upheld by the Himachal Pradesh High Court in the case of Confederation of Indian Pharmaceutical Industry v. UOI. While upholding the validity, the High Court had also held that where the assessee satisfies the AO that the expenditure is not in violation of the Medical Council Regulations, the assessee may legitimately claim a deduction.

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**On 8 December 2015 from 11:30 AM to 12:30 PM IST**

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