



The Hon'ble Bombay High court held that the notification of the medical council dated 10 December 2009 which declared the expenses incurred to provide freebies to doctors unethical practice, is prospective in nature.

M/s Abbott India Limited versus The ACIT WRIT PETITION NO.685 OF 2016

Mumbai, February 10, 2023

in the present case, the assessee is a pharmaceutical company. The assessee in the AY-2008-9 incurs expenditures to provide gifts to the medical practitioner on accounts of sales promotions and sample expenses and claims a deduction for the same in its return of Income as a business expenditure under section 37 of the Act which was partially allowed during the assessment proceedings.

- The Medical Council of India vide notification dated 10 December 2009 amended its code of conduct and held that the gift and other benefits provided to doctors by pharmaceutical companies are unethical practices.
- To further clarify the situation the CBDT issued circular No. 5/12 in 2012 stating that the expenses incurred for providing gifts and other benefits to the doctor are not allowable business expenses under section 37 of the act.

The assessee received a notice in 2015 under section 148 alleging that the income of the assessee for the AY 2008-9 skip the assessment as the assessee had taken the deduction under section 37 of the Act for expenses incurred for the providing gifts and other benefits to the doctors which are prohibited now.

The Hon'ble Bombay high court quashed the Notice stating that: -

Notice under section 148 of the act is issued after the expiry of 4 years for the end of the relevant assessment year

The notification of the Medical Council and the circular of the CBDT are not applicable to the relevant assessment year as same are prospective in nature.

