

Payment for referral, incentives, fee splitting, prescribing branded drugs: a case of professional misconduct, expenditure not eligible for IT exemption: Supreme Court (SC) of India

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In a case before the Hon'ble Supreme Court (SC) of India, it has been claimed that the amended 2002 Regulations did not apply to Apex Laboratories Pvt. Ltd., i.e., pharmaceutical companies were not bound by them. It has been claimed that while medical practitioners were expressly prohibited from accepting freebies, no corresponding prohibition in any binding norm was imposed on the pharmaceutical companies gifting them. In the absence of any express prohibition by law, Apex Laboratories Pvt. Ltd. could not be denied the benefit of seeking exclusion of the expenditure incurred on the supply of such freebies under Section 37(1) of the Income Tax Act.

Court Judgment: Uday Umesh Lalit, J., Ravindra Bhat, J. M/s Apex Laboratories Pvt. Ltd. vs Deputy Commissioner of Income Tax, Large Taxpayer Unit – II, Civil Appeal No. /2022 (@ Special Leave Petition (Civil) No.23207 of 2019). Date of Judgment: 22.02.2022. SC. Available from: [URL:https://main.sci.gov.in/supremecourt/2019/33259/33259_2019_2_1501_33618_Judgement_22-Feb-2022.pdf](https://main.sci.gov.in/supremecourt/2019/33259/33259_2019_2_1501_33618_Judgement_22-Feb-2022.pdf)

The appellant (“Apex”) is aggrieved by a judgment of the High Court of Judicature of Madras [1], wherein the Division Bench upheld an order of the Income Tax Appellate Tribunal [2] (“ITAT”), which in turn upheld an order of the Commissioner of Income Tax (Appeals) [3] (“CIT(A)”). The CIT(A) had partly allowed an appeal from an order of the respondent Deputy Commissioner of Income Tax [4], which partially allowed amounts claimed by Apex as **‘business expenditure’** under Section 37(1) of the Income Tax Act, 1961 (“IT Act”). [Para 1]On 01.08.2012, the Central Board of Direct Taxes (after this, “CBDT”) issued a circular [5], which clarified that expenses incurred by pharmaceutical and allied health sector industries for distribution of incentives (freebies) to medical practitioners are ineligible for the benefit of Explanation 1 to Section 37(1), which denies the application of the benefit for any purpose which is an **‘offence’** or **‘prohibited by law’**. [Para 2]Hon’ble SC observed that in the present case, too, the incentives (or “freebies”) given by Apex Laboratories Pvt. Ltd. to the doctors had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effects. The SC further added that the conceded participation of the assessed, i.e., the provider or donor, was plainly prohibited as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or “freebies”, was no less a prohibition on the part of their giver, or donor, i.e., Apex Laboratories Pvt. Ltd. The following essential issues emerged for discussion in this case:

Issues of referral fee payment, issues of unethical practice, issues of professional misconduct, issue of expenditure for awareness of medical practitioners, the role of NMC/EMBR/ State Medical Council regarding professional misconduct, issue of jurisdiction and the issues of business expenditure and IT Law.

Expert Comments: *Questions for consideration: Whether the complainant established professional negligence on the part of respondents as per the standards governing the duty to care of a medical practitioner?*

Note: The Ethics Medical Registration Board/NMC/SMC should consider such matters seriously and expeditiously to restore the lost trust of the patient community in the medical profession. The role of statutory regulatory authorities and the opinion of experts play a significant role in adjudicating a case of medical negligence.