

Ethnor Ltd. Vs. Cit

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Court : Mumbai

Decided On : Oct-30-2002

Reported in : [2003]126TAXMAN408(Bom)

Appeal No. : IT Ref. Nos. 170 & 460 of 1987, 323 of 1988 & 31 of 1989 30
October 2002

Appellant : Ethnor Ltd.

Respondent : Cit

Advocate for Pet/Ap. : J.D. Mistry, *for the Assessee* R.V. Desai and P.S. Jetly,
for the Revenue

Judgement :

J.P. Devadhar, J.

All these four Income Tax References under section 256(1) of the Income Tax Act, 1961 were heard together and are disposed of by this common judgment, as common issues are involved in all these references.

2. Questions raised in each of the references are as follows :

Questions raised at the instances of the assessee

I.T.R. No. 170 of 1987

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the surtax payable by the assessee was not deductible in computing the assessee's income under the head 'Profits and gains of business or profession'

2.(a) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure of Rs. 8,61,010 incurred by the assessee on what has termed a 'sales, literature and Misc. promotional aids' was expenditure on advertisement, publicity and sales promotion and as such includible for disallowance under sub-section (3A) of section 37 of the Income Tax Act, 1961 ?

(b) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that clause (vii) of sub-section (3B) of section 37 of the Income Tax Act, 1961 did not apply to the said expenditure ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the estimated expenditure of Rs. 2,00,000 on samples distributed free of cost to medical practitioners by the assessee was expenditure on advertisement, publicity and sales promotion and as such includible in computing disallowance under sub-section (3A) of section 37 of the Income Tax Act, 1961 ?'

I.T.R. No. 31 of 1989

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the surtax payable by the assessee was not deductible in arriving at its total income for the year under consideration ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reimbursement of medical expenses by the assessee to its employees falls within the provisions of section 40A(5) as 'salary' ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in upholding the disallowance of Rs. 8,27,563 representing sales literature and miscellaneous promotional expenditure and Rs. 2,00,000 being sample

expenses in view of section 37(3A)

Questions at the instance of the revenue

I.T.R. No. 460 of 1987

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the expenses on printing and publication of various pamphlets containing information of research and experiments conducted and the effect of various drugs and chemicals, their side reactions, etc., and their efficacy in the treatment of various diseases were journals within the meaning of clause (vii) of sub-section (3B) of section 37 of the Income Tax Act, 1961 as it then stood and consequently the expenses on publication and distribution of these journals should not be included in the expenses on advertisement, publicity and sales promotion for the purpose of disallowance under section 37(3A) of the Income Tax Act, 1961?'

I.T.R. No. 323 of 1988

'Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding that the expenses in bringing out pamphlets, booklets, etc., on various diseases and the effect of various medicine manufactured by the assessee-company for the use of the medical profession were expenses on scientific information which cannot be said to be expenses on advertisement, publicity or sales promotion and consequently cannot be included in those expenses for the purpose of making the disallowance under section 37(3A) of the Income Tax Act, 1961 ?'

3. Counsel for both the sides agree that the issue raised in question No. 1 in I.T.R. No. 170 of 1987 and I.T.R. No. 31 of 1989 is covered by the decision of the Apex Court in the case of Smith Kline & French (India) Ltd. v. CIT : [1996]219ITR581(SC) in favour of the revenue. Similarly, counsel for both sides agree that the issue raised in question No. 2 in ITR No. 31 of 1989 is covered by the decision of the Apex Court in the case of CIT v. Mafatlal Gangabhai & Co. (P) Ltd. : [1996]219ITR644(SC) in favour of the revenue.

4. To answer question Nos. 2 & 3, in I.T.R. No. 170 of 1987, question No. 3 in I.T.R. No. 31 of 1989 and the common question raised in I.T.R. No. 460 of 1987 and I.T.R. No. 323 of 1988 it would be necessary to set out few relevant facts. Since the facts in all the References are more or less similar, for the sake of convenience, we have taken the facts in I.T.R. No. 170 of 1987 for answering the aforesaid questions.

Facts in I.T.R. No. 170 of 1987

5. The assessment year involved in the present reference is assessment year 1979-80, corresponding to accounting year ending on 31-12-1978.

6. The assessee-company is engaged in the manufacture of pharmaceutical drugs. The assessee had filed return of income of assessment year 1979-80 on 28-6-1979 showing expenditure of Rs. 20,22,841 as publicity expenses out of which Rs. 8,61,010 was claimed as sales literature expenditure, which according to the assessee, was covered under section 37(3B) of the Income Tax Act (hereinafter referred to as the). The assessing officer held that the said sales, literature expenses did not fall under any of the clauses of section 37(3B) of the Act and, therefore, not eligible for exclusion of the said amount. The assessing officer further noticed that the assessee had given away free samples to doctors but no expenditure was shown to have been incurred in the manufacture of those samples. The assessee claimed that the free samples given by it to the doctors did not form part of advertisement, sales promotion or publicity. The assessing officer rejected the contention of the assessee and held that free samples distributed to the doctors help the doctors to evaluate the effectiveness of the medicines and then recommend to their patients. Thus, according to the assessing officer, the free samples helped sales promotion of the assessee's products and, therefore, the cost of free samples has to be subject to the provisions of section 37(3A) of the Act. Since no details regarding the cost of free samples were furnished, the assessing officer estimated the expenses on account of free samples at Rs. 2,00,000 and considered the same for disallowance under section 37(3A) of the Act.

7. On appeal filed by the assessee, the Commissioner (Appeals) while upholding the order of assessing officer, held that in order to promote the sales of the appellant's products, it was necessary to give wide publicity among members of the medical profession by setting out the comparative advantages of their products over the products manufactured by other competitors in the field. Accordingly, the Commissioner (Appeals) held that the expenditure of Rs. 8,61,010 incurred by the assessee was nothing but expenditure on advertisement, publicity and sales promotion and, therefore, would squarely fall under section 37(3A) of the Act.

8. Before the Commissioner (Appeal), counsel for the assessee further contended that part of the sales, literature expenditure of Rs. 8,61,010 represented expenditure on catalogues and price lists and such expenditure being covered by section 37(3B)(vii) would certainly be out of the purview of section 37(3A). Since the assessee was unable to quantify the amount of costs incurred on printing catalogues and price list and submitted it to be about 20 per cent, the Commissioner (Appeals) estimated and allowed the expenditure on printing price lists and catalogues at Rs. 10,000.

9. As regards the expenditure on samples estimated by the assessing officer at Rs. 2,00,000, the Commissioner (Appeals) held that the assessee has not given the exact expenses involved in the manufacture of free samples with its brand name, which were distributed to doctors and, therefore, the estimated costs of the samples determined by the assessing officer was held to be justified.

10. On further appeal by the assessee, the Tribunal held that the various pharmaceutical products manufactured by the assessee are prescribed as medicines by the doctors to their patients and the patients would normally purchase these products from chemist only on the basis of the doctor's prescription. It was held that with a view to promote the sales of these products, it was necessary for the assessee to supply literature about its products to the medical practitioners. Accordingly, the Tribunal held that the expenditure was covered within the meaning of advertisement, publicity and sales promotion. As regards the applicability of section 37(3B)(vii) is concerned, the Tribunal held that they have verified the medical literature and brochures of the assessee containing

information about their products and found that it only gives information as to how their products were superior in all respect and therefore cannot be said to be covered under section 37(3B)(vii) of the Act. As regards sample expenditure estimated at Rs. 2,00,000 the Tribunal held that the estimated costs of sample determined by the assessing officer has been found to be reasonable by Commissioner (Appeals) and no material was produced before the Tribunal to show that there was any error in such assumption and, accordingly, the Tribunal confirmed the order of Commissioner (Appeals). Hence this reference at the instance of the assessee.

Arguments

11. Mr. Mistry, learned counsel appearing on behalf of the assessee referred to the Budget speech of the Finance Minister for 1978-79 and submitted that section 37(3A) was introduced to partially disallow the expenditure on 'advertisement, publicity or sales promotion' with a view to discourage and curb extravagant, wasteful and austentatious expenditure. It was submitted that the expenditure of Rs. 8,61,010 incurred by the assessee on printing relevant information containing the ingredients, dosage, side effects, etc., of its drugs was not entitled to be caught within the ambit of section 37(3A) of the Act. Mr. Mistry, relied upon the decision of the Apex Court in the case of K.P. Varghese v. ITO : [1981]131ITR597(SC) and submitted that the Finance Minister's speech explaining the reasons for introducing the bill, etc., can be referred to for ascertaining the mischief sought to be remedied by the legislation and its object and purpose while interpreting a Statute. He then referred to the meaning of the word 'advertisement' given in Encyclopedia Britannica (Vol. I page 103) and meaning of the word 'publicity' and 'promotion' given in the Oxford English Dictionary, 2nd Edition (Vol. 12 at page 783 & 618) and submitted that the words 'Advertisement', Publicity & Sales Promotion' denote something designed to attract public attention and to promote the sale of the product in question over the sales of its competitors. According to him, these ingredients were clearly absent in the literature printed at a cost of Rs. 8,61,010. Relying upon the decision of the Calcutta High Court in the case of Griffen Laboratories Ltd. v. CIT : [2000]244ITR68(Cal) , decision of Gujarat High Court in the case of CIT v. Torrent Laboratories (P) Ltd. :

[2000]245ITR29(Guj) , decision of Calcutta High Court in the case of Dolphin Laboratories v. CIT : [2001]249ITR538(Cal) and the decision of this court in the case of CIT v. Allana Sons (P) Ltd. : [1995]216ITR690(Bom) , it was submitted that the medical literature printed by them does not fall within the ambit of the phrase 'advertisement, publicity or sales promotion.

12. Mr. Mistry then contended that in any event expenditure of Rs. 8,61,010 would fall within the exception set out in section 37(3B)(vii) of the Act, being expenditure on a journal or catalogue. According to him, the dictionary meaning of the words journal and catalogue show that what is meant by catalogue is an enumeration or list of materials printed in whole or part and hence the exception to section 37(3A) given in section 37(3B)(vii) will apply in the instant case. He submitted that the reasoning given by the Tribunal for rejecting the assessee's contention is erroneous, without basis and hence unsustainable.

13. As regards cost of physician's sample, Mr. Mistry submitted that the assessee in the instant case, since inception had claimed that the samples were distributed to the medical practitioners for the purpose of feedback. In this connection, he referred to a letter dated 18-8-1983 issued by the assessee seeking feedback from the medical practitioners and the feedback allegedly received from Dr. J. Balasubramanian. Admittedly, this letter dated 18-8-1983 and the feedback received by the assessee were not produced before the Income Tax Officer and were produced before the Tribunal for the first time. He submitted that what is to be disallowed under section 37(3A) is 'expenditure on advertisement'. He submitted that in the instant case, the assessing officer has simply made an estimate of Rs. 2,00,000 to be disallowed under section 37(3A) on the basis that it represents the manufacturing cost of samples. He submitted that this amount cannot fall for disallowance. Mr. Mistry submitted that the ratio laid down by the Apex Court in the case of Eskayef v. CIT : [2000]245ITR116(SC) is not applicable to the case of the petitioner because the Apex Court in that case has clearly envisaged that where samples are given to doctors and feedback is requested from them on the efficacy or side effects, etc., of any drug, then such expenditure would not fall within the disallowing provisions. He submitted that in the case before the Supreme Court, the assessee therein had not led any material to that

effect, whereas in the instant case, the assessee has produced feedback material and hence the decision of the Apex Court in the case of Eskayef (supra) is distinguishable on facts.

14. Mr. Desai, learned counsel appearing on behalf of the revenue, on the other hand submitted that the issues raised in these References are squarely covered by the decision of the Apex Court in the case of Eskayef (supra) in favour of the revenue.

Findings

15. At the outset, we wish to make it clear that Mr. Mistry wanted to canvas an argument that section 37(3A) was in the nature of a proviso to section 37 and that if section 37 was not attracted, then section 37(3A) will also not apply and since in this case it is accepted by the revenue that section 37(3) which deals with the expenditure on 'advertisement' does not apply, making of disallowance to the extent of Rs. 8,61,010 under section 37(3A) does not arise. We have not permitted learned counsel to raise this point as this point was not urged before the department. Even the statement of fact forwarded by the Tribunal, at the instance of the assessee, does not contain any such statement of fact. Hence we have not permitted the assessee to raise the above contention.

16. Now, turning to the facts of the case, section 37(1) of the Act provides for deduction of any expenditure (not covered under sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of the business or profession while computing the income chargeable under the head 'Profits and gains of business or profession'. Section 37(3) provides that notwithstanding anything contained in section 37(1), any expenditure incurred by the assessee after the 31-3-1964 on advertisement, shall be allowed only to the extent and subject to such conditions, if any, as may be prescribed.

17. Sub-sections (3A) to (3D) were introduced to section 37 of the Act by the Finance Act, 1978 with effect from 1-4-1979 and are accordingly applicable to assessment years 1979-80 and 1980-81. Sub-section (3A) provides that

notwithstanding anything contained in sub-section (1) but without prejudice to the provisions of (sub-section (2B) or) sub-section 3, where the aggregate expenditure incurred by the assessee on advertisement, publicity and sales promotion in India exceeds forty thousand rupees, then such percentage of the aggregate expenditure as provided therein shall not be allowed. Sub-section (3B) carved out certain exceptions to sub-section (3A). Sub-section (3B)(vii) with which we are concerned herein, provided that sub-section (3A) shall not apply in relation to any expenditure incurred by an assessee on publication and distribution of journals, catalogues or price lists.

18. In the present case (question 2(a)) the issue before us is, whether the expenditure termed by the assessee as 'sales, literature and Misc. promotional aids' is expenditure on advertisement, publicity and sales covered under section 37(3A) of the Act In our opinion, the very heading under which the expenditure is said to have been incurred by the assessee clearly show that such expenditure is sales promotion expenditure and fall within the ambit of section 37(3A). The Tribunal, on perusal of the medical literature printed by the assessee has in para 17 of its judgment held that the said literature are only brochures containing information about their products and it gives information as to how these products were superior in all respects. Counsel for the assessee produced before us the medical literature/information printed by the assessee. On perusal of the same, it is seen that in respect of 'Halopidol' drug manufactured by the assessee, the relevant information printed by the assessee reads as under :

'toxicity

-As appears from the literature Halopidol does not cause somatic side effects.

-The products has no toxic effect on vital organic functions; kidneys, liver and bone marrow.

-The blood formula does not change.

-Clinical experiments have proven that Halopidol can be administered during long periods of time.'

The medical literature further states as follow :

'Cardiovascular safety

low risk of orthostatic hypotension,

because of its cardiovascular safety Haloperidol is the product of choice in the treatment of elderly patients.'

As regards Triperidol (trifluoperidol) tablets/injections manufactured by the assessee, it is stated in the medical literature as follows :

'controls paranoid symptoms rapidly

-Especially effective in paranoid schizophrenia.

-Highly effective in a wide range of both acute and chronic psychotic disorders.

-Facilitates prompt initiation of rehabilitation.... helps avoid long term hospitalisation.

-Versatility of dosage forms permits easy switchover from IM to oral administration.

-Broad dosage range permits aggressive titration to effective levels for optimal control.

-Common side effects (EPs) easily controlled.

-Minimal risk of hypotension, oversedation, or troublesome anticholinergic effects.'

The information further gives chart showing results of a comparative trial of triperidol with trifluoperazine and states as follows :

'Trifluoperidol (Triperidol) was found to be an effective drug in the treatment of Schizophrenia... it showed distinct advantages over trifluoperazine, particularly in the degree of control and speed of action.'

From the aforesaid literature printed and given by the assessee to the doctors, it is abundantly clear that the entire literature printed is aimed at promoting sale of the assessee's product by setting out its salient features and its superiority in all respects. These medical literature containing curative value of the drugs are given to doctors with free samples clearly aimed at instilling confidence, publicise and promote their product and such expenditure would constitute 'advertisement, publicity and sales promotion' and thus squarely fall within the scope and ambit of section 37(3A) of the Act. The contention of the assessee that the literature published by it, contain only information regarding the ingredients, dosage, side effects, etc., cannot be accepted. On perusal of the medical literature as extracted hereinabove, it can be seen that the literature not merely contains the information regarding the ingredients, dosage, side effects, etc., but the same are intended to advertise their products by demonstrating the superiority and tested efficacy of their products. We, accordingly, hold that the Tribunal was justified in holding that the expenditure on 'sales, literature and Misc. promotional aids' claimed by the assessee was expenditure on advertisement, publicity and sales promotion and as such includible for disallowance under section 37(3A) of the Act.

19. The ratio laid down by the Apex Court in the case of *Eskayef* (supra) wherein it is held that giving free samples to doctors constitute publicity and sales promotion within the meaning of section 37(3A), in our opinion, would *mutatis mutandis* apply to the expenditure incurred by the assessee on printing and supplying medical literature to the doctors with or without samples. Accordingly, we hold that the expenditure incurred by the assessee falls within the scope and ambit of section 37(3A) of the Act and no weightage can be given to the contrary decisions of various High Courts relied; upon by the assessee.

20. The next contention of the assessee (question 2(b)) was that even assuming the expenditure under the head 'Sales, literature and Misc. Promotional Aids' constituted advertisement, publicity and sales promotion, then the expenditure to the extent covered by section 37(3B)(vii) would be an exception to section 37(3A). In other words, the submission was that the expenditure on medical literature being in the nature of publication and distribution of journals, catalogues or price lists falling within the excluded category specified under section 37(3B)(vii), the

said expenditure would be an exception to section 37(3A) of the Act. This contention of the assessee is also without any merit because firstly, the assessee neither in its return nor at any stage of the assessment had given any particulars as to how much expenditure, out of Rs. 8,61,010 fell within the scope of section 37(3B)(vii) of the Act. Secondly, even before the Commissioner (Appeals) the assessee did not precisely give the details of the expenditure covered under section 37(3B)(vii) of the Act and considering the facts of the case, the Commissioner (Appeals) estimated the expenditure of Rs. 10,000 on catalogues and price lists. Thirdly, even before Tribunal, the assessee could not establish that the above estimation was wrong or that, apart from catalogues and price lists the assessee had spent any amount on publication and distribution of journals.

21. Let us now consider whether even on merits the medical literature printed by the assessee can be said to be falling within the meaning of publication and distribution of journals set out under section 37(3B)(vii) of the Act. In our opinion, printing and distribution of journal ordinarily involves publication of article/articles on any subject written by one or many. A Journal is ordinarily published periodically and would contain information in general on any topic or any research work done in a particular field. Taking a concrete example, in the instant case, if the assessee was to publish a periodical paper setting out in general the research activities carried out by it in finding a drug for a particular disease, or it had published and distributed research papers containing scientific information in general about the merits and demerits of administering a particular drug then it could be said to be a journal. However, in the present case, save and except highlighting the curative value of its drug and its overall superiority with a view to impress upon the doctors to prescribe their products to the patients, the assessee has not published any research paper which can be called a 'Journal' as envisaged (sic) under section 37(3B)(vii) of the Act. Accordingly, we are of the opinion that the Tribunal was justified in holding that section 37(3B)(vii) did not apply to the expenditure incurred by the assessee.

22. Now, turning to the question 3 relating to the disallow-ability of the expenditure incurred on free samples of the drugs manufactured by the assessee and supplied to the doctors, in our opinion, the issue is squarely covered by the decision of the

Apex Court in the case of Eskayef (supra). It was however, contended on behalf of the assessee that the Supreme Court has itself in the above case clearly envisaged that where samples are given to doctor's and feedback is requested from them on the efficacy or side effects, etc., of any drug, then such expenditure would not fall within the disallowing provisions. It was submitted that, in the instant case feedback was sought for and in fact feedback regarding the efficacy or side effects of their drug was received from the medical practitioners and hence the assessee cannot be denied relief on the basis of decision of the Apex Court in the case of Eskayef (supra). There is no merit in this contention because, firstly it was not the case of the assessee at the time of assessment proceedings that the samples were given to the doctors with a request to give feedback regarding the efficacy or side effects, etc., of their drugs. Secondly, the assessment order for assessment year 1979-80 was passed by the assessing officer on 31-7-1982 and the alleged letter of the assessee seeking feedback from the doctors regarding the efficacy of their drugs is dated 18-8-1983, i.e., much after the passing of the assessment order. Hence there was no evidence before the assessing officer. The petitioner has produced the feedback allegedly received from Dr. J. Balasubramaniam which is undated. From the aforesaid facts, it is clear that the claim of the assessee that the samples were given to doctors with a request to give feedback regarding the efficacy of the drug is clearly an afterthought and is not borne out by the facts on record. Thirdly, the Apex Court in the case of Eskayef (supra) has considered the decision of the Andhra Pradesh High Court in the case of CIT v. J. & J. Dechane Laboratories (P) Ltd. : [1996]222ITR11(AP) wherein the similar contention was upheld by the Andhra Pradesh High Court and the expenditure incurred to test the efficacy of the drug was held to be outside the scope of section 37(3A). Overruling the said decision of the A.P. High Court, the Apex Court in the case of Eskayef (supra) held that the entire expenditure on distribution of physicians' samples is incurred for the purposes of publicity or sales promotion and, therefore, the expenditure incurred to test the efficacy of the drug falls within the scope of section 37(3A) of the Act and would be subject to the limitations set out therein. In the light of the aforesaid binding decision of the Apex Court, we hold that the Tribunal was justified in including that the cost of physicians sample for disallowance under section 37(3A) of the Act.

23. Before concluding, we would like to point out that the reliance placed on behalf of the assessee on the decision of the Apex Court in the case of K.P. Varghese (supra) is also without any merit. As held by the Apex Court in the case of B.K. Industries v. Union of India 1993 (65) ELT 465, Finance Minister's speech is not law and the Parliament may or may not accept his proposal. In any event, intention for introducing the provisions can be gathered from the incidental material only if there is ambiguity in the statute. In the present case, there is no ambiguity whatsoever in construing the meaning of the words 'advertisement, publicity and sales promotion' in the context of the expenditure on medical literature/physician's sample incurred by the assessee. Moreover, the Apex Court in the case of Eskayef (supra) has already analysed the scope and meaning of the words 'advertisement, publicity and sales promotion' in the context of the physicians samples and hence referring to the external aids like Finance Minister's budget speech, in the instant case does not arise at all.

I.T.R. No. 323 of 1988CIT v. German Remedies Ltd.

24. In this case, Mr. Mistry while adopting his arguments, had made additional submission. He stated that the Tribunal on perusal of the pamphlets, booklets brought out by the assessee has rightly given a finding of fact to the effect that these expenses were in the nature of scientific information and that these expenses cannot be said to be expenses in the nature of advertisement, publicity and sales promotion, under section 37(3A) of the Act. In the absence of any adverse material pointed out by the revenue, we see no reason to interfere with the finding of fact recorded by the Tribunal.

25. In the circumstances, we answer the questions referred to us in each of the Income Tax References as follows:

Income Tax Reference No. 170 of 1987

Que. 1. In the light of the decision of the Apex Court in the case of Smith Kline & French (India) Ltd. (supra), the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Que. 2(a). We hold that the expenditure incurred by the assessee on medical literature was expenditure on advertisement, publicity and sales promotion and as such includible for disallowance under section 37(3A). Accordingly, the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Que. 2(b) : We hold that the medical literature printed by the assessee was not in the nature of publication and distribution of Journals within the meaning of section 37(3B)(vii) of the Act. Accordingly, the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Que. 3 : The issue is concluded by the decision of the Apex Court in the case of Eskayef (supra). Accordingly, the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Income Tax Reference No. 31 of 1989

Que. 1 : In the light of the decision of the Apex Court in the case of Smith Kline & French (India) Ltd. (supra), the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Que. 2 : The issue is concluded by the decision of the Apex Court in the case of Mafatlal Gangabhai & Co. (P) Ltd. (supra). Accordingly, the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Que. 3 : The issue is concluded by the decision of the Apex Court in the case of Eskayef (supra). Accordingly, the question is answered in the affirmative, i.e., in favour of the revenue and against the assessee.

Income Tax Reference No. 460 of 1987

Q : We hold that the medical literature printed by the assessee was not in the nature of publication and distribution of journals within the meaning of section 37(3B)(vii) of the Act. Accordingly, the question is answered in the negative, i.e., in favour of the revenue and against the assessee.

Income Tax Reference No. 323 of 1988

Q. We uphold the order of the Tribunal and accordingly answered the question in the affirmative, i.e., in favour of the assessee and against the revenue.

All the above References are disposed of in the above terms. However, there will be no order as to costs.

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