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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 05.12.2025*

+ **ITA 200/2017**
+ **ITA 201/2017**
+ **ITA 207/2017**
+ **ITA 208/2017**
+ **ITA 209/2017**
+ **ITA 210/2017**
+ **ITA 211/2017**

PR. COMMISSIONER OF INCOME TAX -21Appellant
Through: Mr. Indruj Singh Rai, SSC Mr.
Sanjeev Menon, Mr. Rahul Singh,
JSCs and Mr. Gaurav Kumar,
Advocate.

versus

M/S. REMFRY & SAGARRespondent
Through: Mr Ajay Vohra, Sr Advocate with Mr
Aditya Vohra and Mr Tanmay
Dhakras, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MINI PUSHKARNA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 76960/2025(early hearing) in ITA 200/2017;
CM APPL. 76940/2025(early hearing) in ITA 201/2017;
CM APPL. 76942/2025(early hearing) in ITA 207/2017;
CM APPL. 76964/2025(early hearing) in ITA 208/2017;
CM APPL. 76963/2025(early hearing) in ITA 209/2017;
CM APPL. 76941/2025(early hearing) in ITA 210/2017;
CM APPL. 76958/2025(early hearing) in ITA 211/2017

1. The Assessee/respondent has filed these applications for early hearing of the appeals.
2. The contents of the applications reveal that it is the case of the



respondent/applicant that the substantial questions of law, which have been framed *vide* orders dated 08.03.2017 and 10.03.2017 in these appeals, are covered by the judgment of this Court passed in the Assessee's five cases being ITA No.525/2025, 526/2025, 527/2025, 528/2025, & 531/2025 for different Assessment Years (AYs) titled ***Pr. Commissioner of Income Tax v. M/s. Remfry and Sagar, 2025:DHC:9183-DB.***

3. Noting the contents of the applications and also Mr Indruj Singh Rai, learned SSC for the Appellant/Revenue has no objection if the early hearing applications are allowed, the same are allowed. The appeals are taken up for hearing.

4. The applications stand disposed of.

ITA 200/2017; ITA 201/2017; ITA 207/2017; ITA 208/2017; ITA 209/2017; ITA 210/2017; & ITA 211/2017.

5. In these appeals under Section 260A of the Income Tax Act, 1961, following substantial questions of law have been framed by this Court *vide* order dated 08.03.2017, which reads as under:-

“(i) Did the ITAT fall into error in allowing the license fee paid to M/s. Remfry & Sagar for use of goodwill by the assessee, having regard to the provisions in the Bar Council Rules and the Advocate's Act, 1961?

(ii) Did the ITAT overlook the effect of first explanation to Section 37 of the Income Tax Act, 1961, in the circumstances of the case?

(iii) Whether the ITAT fell into error in holding that the existence or otherwise of a devise, i.e. use of goodwill, was irrelevant in the circumstances of the case?”

6. Mr Rai, learned SSC for the Appellant, fairly states that the above questions which fall for consideration in these appeals are squarely covered against the appellant /Revenue and in favour of the respondent/Assessee in



the above appeals.

7. This Court in *M/s Remfry and Sagar (supra)* while deciding the five appeals pertaining to different AYs, being ITA No.525/2025, 526/2025, 527/2025, 528/2025, & 531/2025, has in paragraphs 4 and 5 stated as under:-

“4. In view of the fact that Mr. Rai states that the issue which arises for consideration in all these appeals is covered against the Revenue/appellant in terms of the judgment in ITA no. 199/2017 Principal Commissions v. M/S Remfry & Sagar, NC: 2025:563-DB for the parity of reasons, more specifically as stated by this Court in paragraph 20 onwards, which we reproduce as under, the appeals are dismissed:

“20. It was in the aforesaid backdrop, that Mr. Rai urged that the proscription comprised in the Bar Council of India Rules with respect to sharing of remuneration had clearly been violated and consequently the expenditure was liable to be disallowed in terms contemplated by Explanation 1 forming part of Section 37.

21. Appearing for the respondent assessee, Mr. Vohra, learned senior counsel submitted that it would be wholly incorrect to view the Bar Council of India Rules as amounting to a prohibition imposed by law and thus fall within the ken of Explanation 1. Mr. Vohra submitted that the Explanation to Section 37 prohibits an expenditure which may have been incurred for the purposes of commission of an offense or an action prohibited by law. Learned senior counsel essentially laid emphasis on the provision embodying the word “purpose” and which according to Mr. Vohra would have to necessarily be read as envisaging expenditure incurred for a purpose which is prohibited by law.

22. It was contended that undisputedly and in terms of the license agreements, the remuneration which was paid to RSCPL was in lieu of the grant of license to



utilize the goodwill represented by the name “Remfry & Sagar”. Mr. Vohra submitted that the name “Remfry & Sagar” had earned substantial goodwill which had been acquired over several decades as a result of delivering exceptional legal services. It was thus submitted that the payment of licence fee was solely for the purposes of enabling the newly constituted firm to derive benefits of the goodwill attached to the name “Remfry & Sagar”. Bearing in mind the same constituting the primary purpose for payment of license fee, Mr. Vohra submitted the same could not be possibly construed as being an expenditure prohibited by law.

23. It was his submission that the appellants were wholly unjustified in seeking to interpret the provisions of the license agreement as embodying an intent of sharing of remuneration with RSCPL or the heirs of Dr V. Sagar. This, according to Mr. Vohra, clearly overlooks the principal purpose for which license fee was agreed to be paid and which was to use and exploit the goodwill attached to the name “Remfry & Sagar”. It was thus his contention that if the purpose of payment of license fee were borne in consideration, the Court would come to the inevitable conclusion that the same was for utilizing goodwill and which could by no stretch of imagination be said to be an offence or an act prohibited by law.

24. Mr. Vohra also commended for our consideration the well settled precept of courts being obliged to look at and discern the real nature of a transaction, the aim and object underlying the expenditure incurred in order to answer the issue of whether the expenditure was for the purpose of business. Our attention in this respect was firstly drawn to the decision of the Supreme Court in Assam Bengal Cement Co Ltd Vs CIT8 and where the aforesaid principle was explained in the following terms:-

“22. In Benarsidas Jagannath, In re [Benarsidas



Jagannath, In re, 1946 SCC OnLine Lah 71 : (1947) 15 ITR 185 (Lah)], a Full Bench of the Lahore High Court attempted to reconcile all these decisions and deduced the following broad tests for distinguishing capital expenditure from revenue expenditure. The opinion of the Full Bench was delivered by Mahajan, J. as he then was, in the terms following : (ITR pp. 198-99)

“... It is not easy to define the term “capital expenditure” in the abstract or to lay down any general and satisfactory test to discriminate between a capital and a revenue expenditure. Nor is it easy to reconcile all the decisions that were cited before us for each case has been decided on its peculiar facts. Some broad principles can, however, be deduced from what the learned Judges have laid down from time to time. They are as follows: (1) Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment : vide Lord Sands in IRC v. Granite City Steamship Co. Ltd. [IRC v. Granite City Steamship Co., 1927 SC 705 : 13 TC 1 at p. 14] at TC p. 14. In City of London Contract Corpn. v. Styles [City of London Contract Corpn. v. Styles, (Surveyor of Taxes), (1887) 2 TC 239 at p. 243 (CA)] at TC p. 243, Bowen L.J. observed as to the capital expenditure as follows:

“You do not use it “for the purpose of” your concern, which means, for the purpose of carrying on your concern, but you use it to acquire the concern.”

(2) Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade : vide Viscount Cave,



L.C., in Atherton v. British Insulated & Helsby Cables Ltd. [Atherton (Inspector of Taxes) v. British Insulated & Helsby Cables Ltd., 1926 AC 205 : 10 TC 155 (HL)] If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether. Thus, if labour saving machinery was acquired, the cost of such acquisition cannot be deducted out of the profits by claiming that it relieves the annual labour bill, the business has acquired a new asset, that is, machinery.

The expressions “enduring benefit” or “of a permanent character” were introduced to make it clear that the asset or the right acquired must have enough durability to justify its being treated as a capital asset.

(3) Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. Fixed capital is what the owner turns to profit by keeping it in his own possession. Circulating or floating capital is what he makes profit of by parting with it or letting it change masters. Circulating capital is capital which is turned over and in the process of being turned over yields profit or loss. Fixed capital, on the other hand, is not involved directly in that process and remains unaffected by it.”

23. This synthesis attempted by the Full Bench of the Lahore High Court truly enunciates the



principles which emerge from the authorities. In cases where the expenditure is made for the initial outlay or for extension of a business or a substantial replacement of the equipment, there is no doubt that it is capital expenditure. A capital asset of the business is either acquired or extended or substantially replaced and that outlay whatever be its source whether it is drawn from the capital or the income of the concern is certainly in the nature of capital expenditure. The question however arises for consideration where expenditure is incurred while the business is going on and is not incurred either for extension of the business or for the substantial replacement of its equipment. Such expenditure can be looked at either from the point of view of what is acquired or from the point of view of what is the source from which the expenditure is incurred. If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset or advantage for the enduring benefit of the business is thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital or the income of the concern or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of the payment would then be of no consequence.



It is only in those cases where this test is of no avail that one may go to the test of fixed or circulating capital and consider whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. If it was part of the fixed capital of the business it would be of the nature of capital expenditure and if it was part of its circulating capital it would be of the nature of revenue expenditure. These tests are thus mutually exclusive and have to be applied to the facts of each particular case in the manner above indicated.”

25. Mr. Vohra also cited for our consideration the decision rendered by this Court in *Shriram Refrigeration Industries Ltd Vs CIT9* and where the test was formulated as warranting a determination of the purpose for which the amount had been paid. It was thus contended that Courts have consistently applied the “purpose test” in order to ascertain the legitimacy of an expenditure stated to have been incurred in the course of and in furtherance of business. It is these rival submissions which fall for our consideration.

26. We at the outset note that the disallowance which is contemplated under Section 37 is expenditure incurred for any purpose which is an offense or a purpose prohibited by law. It is thus manifest that it is principally the purpose for which the expenditure is incurred which would be decisive of whether it is liable to be disallowed. Regard must also be had to the fact that the expression “prohibited by law” is coupled to the commission of an offense. It is, therefore, apparent that the expenditure which the provision intends to be ignored and disallowed is that which may be expended for commission of an offense or like motive. We would, therefore, have to consider whether consideration parted for use of goodwill would fall within the scope of that expression as well as whether the asserted



violation of the Bar Council of India Rules would have justified the disallowance.

27. We at the outset note that it is not the case of the appellants that an offense, as generally understood, was committed. According to them, a violation of the Bar Council of India rules amounted to the respondent acting in violation of a statutory prohibition and thus the expenditure liable to be disallowed.

28. We find ourselves unable to sustain that contention since, in our considered opinion, it is the principal purpose test which would be determinative of whether the expenditure was one which could have been disallowed. As noticed in the previous parts of this judgment, while examining the reach of the Explanation to Section 37, it would have to be found as a matter of fact that the expenditure was incurred for the commission of an offense as known in law or for a purpose prohibited. A breach of the Bar Council of India Rules is admittedly not classified as an offense. That then leaves us to examine whether the purpose underlying the expenditure was for a purpose prohibited by law.

29. As was rightly contended by Mr. Vohra, the primary, nay, sole purpose for incurring expenditure towards license fee was to use the words “Remfry & Sagar” and derive benefit of the goodwill attached to it. The appellant do not dispute that Dr. Sagar had validly acquired the goodwill and that the same constituted a valuable asset which was transferable. The execution of the gift deed is also not questioned. What the appellant seeks to contend is that the gift to RSCPL was a ruse.

30. We at the outset note that the validity of the gift deed was clearly an unwarranted digression since the primary question which arose for consideration was the validity of the expenditure incurred. The solitary transaction which arose for scrutiny was the payment of license fee. We fail to appreciate how the appellants



could have meandered down the path of questioning the validity of the gift or doubting the motive, purpose and intent underlying the same. Whether the same was a measure adopted for the purpose of monetising the goodwill or a part of legacy planning were clearly not issues germane to the question whether the expenditure was liable to be disallowed. We, in this regard, also bear in consideration the undisputed fact that four unrelated parties joined the partnership and unanimously decided to make use of the goodwill and the name of the firm which had earned a considerable reputation. The appellants thus, and in our considered opinion, clearly committed an error in seeking to question the motive underlying the gift made by Dr. Sagar.

31. We then revert to the fundamental issue of whether the payment of license fee could be regarded as an expenditure incurred for a purpose prohibited by law. A payment made for use of goodwill cannot possibly be viewed as being an illegal purpose or one prohibited by law. A person would be obliged to part with consideration for the use of goodwill if it seeks to derive benefit and advantage therefrom. Undisputedly, Remfry & Sagar had acquired a reputation and goodwill in the field of legal services. What the respondent assessee thus sought to do was to derive advantage and benefit of association as also the use of a name which carried a reputation in the legal arena. The agreement to utilise and derive benefits of goodwill cannot therefore be viewed as a ruse or one aimed at tax avoidance.

32. We have already found that it was permissible for Dr. Sagar to monetise the goodwill acquired and earned. The goodwill thus represented an asset held by Dr. Sagar and which could have been validly gifted to his children. It was the resultant firm which sought to derive benefit from the goodwill attached to that name. The consideration paid for the use of the same, thus,



can neither be said to be for an unlawful purpose or one motivated by the intent to overcome a prohibition raised by law.

33. Insofar as the Bar Council of India Rules are concerned, they are concerned with a sharing of revenue and fee. What those rules proscribe is the sharing of remuneration earned by a firm of lawyers with one who is not a member of the legal profession. The use of the word “sharing” in that Rule is clearly intended to deal with a situation where a lawyer intends to part with or enter into an arrangement with another to claim a part or portion of the fee that may be earned. What the said Rule envisages is an arrangement where a lawyer agrees to share the fee earned from a practise with someone who is not a lawyer. It prohibits a split, divide, dividend or equity in the revenue that may be generated by a law practise.

34. However in the facts of the present case, we find that the reference to a percentage of the revenue earned by the law practise was intended to principally provide for a basis to compute the consideration liable to be paid for use of goodwill and the utilisation of the name. The primary purpose of referring to the total billing of the law firm was to provide a firm, definite and fixed basis to compute the consideration liable to be paid for use of goodwill. The consideration so paid is thus clearly not liable to be characterised as a sharing of revenue derived from the practise but fundamentally for the exercise of the right to exploit and derive advantage from goodwill.

35. The linking of the consideration for the aforesaid purpose to the revenue earned by the firm only constituted a basis and a measure to determine the consideration that was to be paid. The arrangement was clearly not driven by a motive to share revenues earned by the legal firm. It was purely consideration paid for use of the goodwill attached to the name “Remfry & Sagar”. We thus find ourselves unable to



accept the argument of the appellant that the Bar Council of India Rules were violated.

36. The sheet anchor of the submissions advanced by Mr. Rai was the judgment of the Supreme Court in Apex Laboratories and where the “freebies” provided to legal practitioners was found to be an expenditure incurred for a purpose prohibited by law. In our considered opinion, the reliance placed on Apex Laboratories is clearly misplaced since the said judgment turned upon Regulation 6.8 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and which clearly prohibited a medical practitioner from receiving gifts, travel expenses, hospitality as well as cash or other monetary grants. It was that prohibition in law which was found to have been violated. In view of all of the above, we find ourselves unconvinced of the challenge that stands raised in these appeals.

37. We would consequently answer the questions posed for our consideration in the negative and against the appellants. The appeals shall stand dismissed.”

5. As no substantial question of law arises, the appeals are dismissed.”

8. For parity of reasons, and in view of the aforesaid position of law, we are of the view that the substantial questions of law, which have been framed in these appeals need to be decided against the appellant / Revenue and in favour of the respondent/Assessee.

9. Accordingly, these appeals are dismissed.

V. KAMESWAR RAO, J

MINI PUSHKARNA, J

DECEMBER 05, 2025/M