

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**LOK SABHA
UNSTARRED QUESTION NO. 4041**

**TO BE ANSWERED ON FRIDAY THE 4TH JANUARY, 2019
14 PAUSHA, 1940 (SAKA)**

“UNETHICAL CLAIM OF TAX BENEFITS”

**4041: SHRI KIRTI AZAD,
DR. BHARATIBEN D. SHYAL,
SHRI RAMESH CHANDER KAUSHIK**

Will the Minister of FINANCE be pleased to state:

- (a) whether medical fraternity exploits tax mechanism in the country to unethically claim benefits from it and if so, the reaction of the Government thereto;
- (b) whether several pharma companies and medical devices companies have claimed tax benefits of crores of rupees spent in buying gifts and sponsoring seminars and foreign trips for doctors and if so, the details thereof;
- (c) whether the global giants have been parking such expenses under accounting heads to evade suspicion to claim benefits under Section 37(1) tax deduction of the Income Tax Act and if so, the details thereof;
- (d) whether the Income Tax Appellate Tribunal has been forced to rule in favour of such smart companies in the absence of an effective regulatory code and if so, the details thereof; and
- (e) the corrective measures taken/being taken by the Government in this regard?

ANSWER

**MINISTER OF STATE IN THE MINISTRY OF FINANCE:
(SHRI SHIV PRATAP SHUKLA)**

(a) & (b) Under section 37(1) of the Income-tax Act, 1961 (Act) among other conditions specified therein, the expenditure claimed as a legitimate business expenditure has to be laid out or expended wholly and exclusively for the purpose of the business. Further, explanation 1 to this provision provides that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law cannot be claimed as deductible. This provision was clarified by the CBDT vide its circular no. 5/2012 dated 01.08.12. CBDT had clarified its position that expenses incurred by the assesseees in the pharmaceuticals/allied health care sector in providing freebies to medical practitioners were expressly disallowable under section 37(1) of the Act read with *Explanation 1* thereto in view of Guidelines of Medical Council of India issued in the year 2009 which forbids such practices.

Accordingly, disallowances are made in assessments by the Assessing Officers wherever it is seen that assesseees in the pharmaceuticals/allied health care sector had claimed any illegal tax benefits on money spent in buying gifts, sponsoring seminars and foreign trips for doctors. This information regarding the number and quantum of such claims by assesseees in the pharmaceuticals/allied health care sector is not maintained in a centralized manner with the CBDT.

(c) It is a fact that the issue is under litigation due to contrary stand of Income-tax Department and assesseees in the pharmaceuticals/allied health care sector. While Income-tax Department, in view of the aforesaid circular and provisions of the Act treats the expenditure in nature of freebies to doctors as expressly disallowable, assesseees in the pharmaceuticals/allied health care sector often claim it as legitimate business expenditure in their return of income.

(d) While Income Tax Appellate Tribunal has given relief in some of the cases, Department has preferred further appeals against the tribunals' orders. As far as Income-tax Department is concerned, it has clarified its stand on the issue in unambiguous terms vide issuance of the aforesaid circular.

(e) Doesn't arise in view of reply to part (d).
