

## Expenditure incurred to defend directors arrested for narcotics offence not an allowable business expenditure

**Summary – The Mumbai ITAT in a recent case of OPM International (P.) Ltd., (the Assessee) held that expenditure incurred on professional fees to defend directors of assessee-company who were arrested under NDPS Act, 1985 could not be allowed being squarely covered within meaning of Explanation to section 37(1).**

### Facts

- The assessee was engaged in the business of import of timber and heavy metal scrap.
- On a specific information, a container of Maersk line was intercepted mid sea by the officers of Narcotics Control Bureau (NCB). The container was destined to be delivered to the assessee. Thereafter, the professional director and the managing director of the company were arrested by NCB.
- The assessee debited professional fees which was legal expenses incurred to defend both the directors of the company in that case.
- The Assessing Officer did not allow deduction towards such expenditure on the ground that expenditure was incurred for the purpose of an offence prohibited by law.
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal.

### Held

- A bare perusal of *Explanation* to section 37(1) indicates that incurring of any expenditure for a purpose which is an offence or prohibited by law cannot be allowed as deduction.
- On a specific query, it was stated that no final order on their conviction or acquittal was passed so far.
- Under such circumstances, there can be no reason for allowing deduction towards such an expenditure which has been incurred for the purpose of an offence prohibited by law.
- The second ground of the assessee being that there is no nexus between the professional fees paid and breach of law is also not sustainable.
- The *Explanation* to section 37(1) is clear that, any expenditure incurred for any purpose which is an offence or which is prohibited by law cannot be allowed as deduction.
- In view of the foregoing discussion, there is no infirmity in the impugned order warranting any interference.