

Exp. incurred by solicitor on medical treatment of his eyes is personal expense; disallowable

Summary – The High Court of Bombay in a recent case of Dhimant Hiralal Thakar, (the Assessee) held that Expenditure incurred on medical treatment of eyes is personal in nature

Facts

- The assessee was a solicitor by profession. He incurred an expenditure on a foreign tour in connection with a pre-operation investigation of his eyes. He claimed deduction of this expenditure under section 37(1).
- The Assessing Officer disallowed said claim on ground that it was personal expenditure.
- The Commissioner (Appeals) upheld order of the Assessing Officer.
- The Tribunal concurred with findings of the Assessing Officer and the Commissioner (Appeals).
- On reference to the High Court:

Held

Elements of section 37(1)

- Section 37 is a residuary provision. In order to be eligible for deduction under section 37(1), following conditions are required to be satisfied:
 - (1) The expenditure must not be of the nature described in sections 30 to 36;
 - (2) The expenditure must have been laid down wholly and exclusively for the purpose of business/profession of the assessee;
 - (3) The expenditure must not be capital in nature;
 - (4) The expenditure must not be personal in nature

Expenditure on medical treatment of eyes is a personal expenditure

- In the present case no evidence has been brought on record to establish that in the absence of investigation and treatment, the assessee would be handicapped in discharging his obligation as a Solicitor/Advocate. If submission of assessee is taken to its logical conclusion, then every and all expense incurred on daily living and food would be allowable as expenditure under section 37. Thus, we find no substance in the contention that it is not a personal expenditure incurred by the appellant.

Expenditure not wholly and exclusively for business

- In the case, it is an expenditure which is personal in nature and the benefit of such expenditure in the profession or business is only consequential to the personal expenses. Therefore, it is not an expenditure which can be said to be incurred wholly or exclusively for the purpose of business.
- The words used in section 37(1) is wholly and exclusively for the purposes of business. In this case, the finding of fact is that it is incurred for the personal purposes. Be that as it may, the words used are '*wholly and exclusively for the purposes of business or profession*'. In normal understanding the word 'wholly' would mean entirely and the word '*exclusively*' would mean solely. Thus, any element of expenditure not laid out entirely and solely for the purpose of profession would not be covered by section 37(1). One has to examine this from the perspective of the person who does makes the expenditure. In this case, the benefit, if any, of improvement in the eyes would also enure to the applicant not only in the profession but also in all other walks of life.
- The test would really be whether in the absence of being in business or profession, would the applicant have incurred the expenditure to improve his eyes and the answer has to be 'yes' keeping in view the normal conduct of human affairs. This is because effective eye sight is a necessity for living a life of a complete human. Therefore, in this case the expenditure is personal and incidental benefit if any is to the profession carried out by the applicant.

Conclusion

- The submission on behalf of the applicant that eyes are required to be exclusively used for the purpose of profession by the applicant, cannot be accepted. Eyes are an important organ of the human body and is essential for the efficient survival of a human being. Eyes are thus essential not only for the purpose of business or profession but for purposes other than these which are so many. It is therefore clear that the said expenditure as claimed by assessee is not in the nature of the expenditure wholly and exclusively incurred for the purposes of the profession of the assessee and thus this expenditure cannot be claimed by the assessee to be allowed as deduction in computing the income chargeable under the head profits and gains from business or profession in case of the assessee as per the provisions of section 37.