

Foreign travel exp. of director's family allowed as family members met foreign vendors as ex-directors

Summary – The Ahmedabad ITAT in a recent case of Ideal Sheet Metal Stamping & Pressing (P.) Ltd., (the Assessee) held that where company took business decision that senior directors, who were on their way out, would personally meet foreign vendors and introduce new directors, merely because all directors were family members or company derived no immediate tangible benefit, there would be no disallowance of foreign travel expenses under section 40A(2)

Facts

- During the course of scrutiny assessment proceedings, the Assessing Officer noted that certain family members of the Directors and Ex-Directors of the assessee-company had travelled to USA and foreign travelling expense had been claimed by assessee-company. He disallowed entire expense treating the same as personal expense.
- The Commissioner (Appeals) was of the view that purpose behind visit to USA was commercial and for the benefit of business of assessee, to continue the business relationship in future, it was also necessary to introduce the directors to the suppliers; and that the Assessing Officer had not doubted the genuineness of the expenditure. Hence, just on the basis of presumption, expense could not be disallowed. It was a fact that directors were relatives and to disallow expense under section 40A(2)(b) the Assessing Officer had to bring on record the comparative cases. However, as directors all visited together, personal expenditure could not be ruled out. Considering all the above facts, the Commissioner (Appeals) disallowed 50 per cent of total expenditure deleting balance expenses.
- On cross appeals:

Held

Disallowance under section 40A(2) only on payment to specified persons

- The Assessing Officer proceeded to make the disallowance, under section 40A(2), on the basis that the expenditure was "unreasonable and excessive" and that the assessee did not derive any tangible benefit from this foreign travel expenses inasmuch as there was a fall in the gross profit and the persons travelling were family members. As for the emphasis on the fact that the persons travelling together were family members, CIT(A) found that all the four persons travelled were directors of the assessee company.
- Nothing really turns against the assessee so far as relationship of the directors is concerned. In any event, the reason of disallowance is under section 40A(2) but then the disallowance under that section comes into play only when the payment is made to the specified persons.
- But then so far as the expenditure on foreign travel is concerned, the payment is not made to the specified persons. Section 40A(2) specifically deals with the situation in which the payment is made

to the specified persons. That is not the case here. The payment is made in respect of foreign travel of the specified persons but that does not bring the expense within the scope of disallowance under section 40A(2). The very foundation of impugned disallowance is thus wholly unsustainable in law.

Personal expenses of directors if incurred for business purpose not disallowable

- As for the element of personal expenses being present is concerned, the assessee is a legal entity. Even if an expenses incurred by the assessee results in a personal advantage to its directors, such a fact of personal advantage to the directors does not affect the deductibility of expenses as long as the expenses are incurred wholly and exclusively for the purposes of business of the company. A personal advantage to the directors, even if that be so, cannot be a reason enough for resorting to the disallowance.

Expenses were for business purposes

- The decision that senior directors, who were on their way out, personally meet the vendors and introduce the newer directors. Whether this was essentially a business decision and it cannot be open to the Assessing Officer to question same.
- The element of business needs in such circumstances is clearly present.

Immediate tangible benefit not necessary

- The assessee company may or may not have direct tangible benefit as a result of the expense but then just because the assessee does not get immediate tangible benefit, the expense does not cease to be deductible in nature.

Entire disallowance deleted

- The disallowance has been made under section 40A(2) and, in any event, it cannot be open to the Assessing Officer to improve upon his case at this stage and add the reasons which were not even taken up at the assessment stage. Keeping in view these discussions, as also bearing in mind entirety of the case, it is deemed fit and proper to delete the entire disallowance. The assessee gets the further relief accordingly.
- In the result, the appeal of the assessee is allowed.