

## **High Court disallows travel exp. of wife who went with director on business tour**

**Summary – The High Court of Punjab & Haryana in a recent case of Hero Cycles Ltd., (the Assessee) held that where assessee-company was not able to prove that travel expenses of Directors' wives were only for business tour, expenditure could not be allowed**

**Where assessee-company did not bifurcate its expenditure incurred in respect of dividend income under section 80M, Assessing Officer could estimate and recompute such expenditure**

**If Appellate Authorities found that expenses liable to be deducted under section 80M were considered under wrong head, Assessing Officer must be directed to rectify that error**

### **Facts**

- The assessee-company received dividend income from two group companies and claimed deduction.
- The Assessing Officer enumerated management expenses of assessee related to dividend income and allowed proportionate management expenses for the purpose of section 80M.
- On appeal, the Commissioner (Appeals) upheld the Assessing Officer's decision to consider the management expenses as well as the computation thereof.
- On further appeal, the Tribunal held that section 80M does not authorise the Assessing Officer to estimate the expenditure and recompute the income by way of dividend for the purpose of deduction allowable under section 80M.
- On appeal before the High Court:

### **Held**

- Where the assessee does not provide any bifurcation of the expenditure incurred in respect of its income, the Assessing Officer has no option but to estimate the expenditure and to recompute the income by way of dividend to arrive at the deduction that may be allowed under section 80M. Assuming that some portion of the expenditure is attributable to the dividend earned, the Assessing Officer must estimate the extent thereof. If the assessee furnishes proof or details of such expenditure to the satisfaction of the Assessing Officer he may accept the same. However, the assessee does not furnish a bifurcation of the expenses or any reasonable basis for arriving at the same, the Assessing Officer has no option but to make a reasonable estimate of the same.
- The Tribunal's observation that when an assessee claims that it has not incurred any expenditure for earning the dividend income, the onus of proof lies on the Assessing Officer to prove otherwise namely that the assessee has incurred the expenditure is correct. The Tribunal's further observation that the Assessing Officer had not brought out any material or evidence on record which may

establish that the assessee had incurred any expenditure for the purpose of earning the dividend, is, however, incorrect. In cases such as this, the Assessing Officer is justified in presuming that some expenditure had been incurred for the purpose of earning the dividend. Even if the investments yielding the dividend are in group companies, it cannot be said that no expenditure for making the investments which yielded the dividend had been incurred. For instance there is a decision making process that is undertaken before making the investment. Group companies do not blindly invest in each other. Even the decision whether or not to invest in the group companies requires application of mind. If the investment is merely to yield the dividend the management of the investing company is bound to apply its mind as to whether it would be a prudent investment or not. Even if an investment is only for the larger benefit of the group itself or for the benefit of the particular company in the group, the management of the investing company would have to apply its mind on a variety of issues including as to whether the investment would serve this purpose; whether the investment would be detrimental to the investing company and to weigh the *pros and cons* of such investment for itself and for the members of the group. Further the management of the funds on a regular basis and monitoring the investment even in group companies would be imperative. It is not even the assessee's case that there was an over all policy decision by which the investments had to be made irrespective of the facts and circumstances obtaining at any given point of time. Indeed it would be difficult to envisage such a situation. In cases such as this, therefore, there would arise a justifiable presumption that some expenditure would be required for the purpose of earning dividend on such investments. The onus would then shift to the assessee to establish that no expenditure whatsoever was incurred for earning the dividend. The Assessing Officer was, therefore, justified in coming to the conclusion that the assessee had incurred expenditure towards earning the said dividend. The assessee has not furnished any material in this regard. The Assessing Officer must, therefore, estimate the same if he satisfied that some expenditure for earning the dividend had been incurred.

- The manner in which the expenditure is computed by the Assessing Officer cannot be faulted. The only question is whether the management expenses incurred were correctly computed. For this purpose the Assessing Officer noted the management expenses incurred by the assessee under the head 'administrative expenses which relate to dividend income' . The assessment order at the foot of the table states that the total management expenses are Rs. 32,59,658. It was not contended on behalf of the assessee that these are the total management expenses. In other words it was not contended that the assessee did not incur any management expenses other than in the sum of Rs. 32,59,658. The management expenses worked out by the Assessing Officer were those relating only to the investment business.
- The Tribunal held that the Assessing Officer cannot be permitted to take a contrary stand while computing the income from dividend under section 56 and by allowing deductions under section 80M.

- The assessee supported this finding by contending that the management expenses had already been deducted by the Assessing Officer in the computation of income under the head 'profits and gains of business or profession'. He contended that having done so the same cannot be taken into consideration while computing deductions under section 80M which relate only to income from other sources.
- The deductions under section 80M must be computed in accordance with the provisions of section 80M. If the Appellate Authorities find that the expenses liable to be deducted have been considered under the wrong head, they must direct the Assessing Officer to rectify that error for all purposes. The expenses which are entitled to be deducted. They must be deducted *qua*/in respect of the correct head of income. In the present case the expenditure incurred to yield dividend under section 80M must be deducted under section 57 (iii).