

Non-disclosure of plot details of housing project leads to sec. 80-IB disallowance in reassessment

Summary – The Delhi ITAT in a recent case of Hotel Steelwell (P.) Ltd., (the Assessee) held that where payment was made to tenants to vacate hotel premises to convert it in a shopping complex, since expenditure incurred by assessee was in respect of making asset fit for utilization for new business, such expenditure would be capital expenditure; where assessee claimed said expenditure as revenue expenditure, penalty under section 271(1)(C) was to be imposed

Facts

- The assessee company came into existence after demerger of ITDC and as a part of disinvestment of ITDC, the assessee company bought the hotel premises being run by ITDC and, therefore, the assessee company had to pay Rs. 73 lakh to the tenants occupying the premises, for getting vacant possession of the hotel building.
- For the relevant year, assessee filed its return of income declaring loss of Rs. 3.80 crore. The deduction of Rs. 73 lakh claimed by the assessee as revenue expenditure under section 37(1) incurred for getting the hotel premises vacant, was disallowed by Assessing Officer holding the same as capital expenditure. The Assessing Officer imposed penalty under section 271(1)(c) on assessee.
- On assessee's appeal, the Commissioner (Appeals) confirmed the penalty.
- On assessee's appeal to the Tribunal:

Held

- The provisions of section 37(1) are quite unambiguous providing that only such expenditure are eligible for deduction which are laid out or expended wholly and exclusively for the purposes of business or profession, meaning thereby existence of business is *sine qua non* for the purpose of which the expenditure has to be incurred for deduction. This section also clearly bars the deduction of capital expenditure. In the present case, as per demerger agreement, the appellant acquired the hotel premises and under the terms of demerger the appellant was not having any right to continue the hotel business from the very date of its takeover. It is also an undisputed fact that no further business was there in existence, on which the impugned expenditure were incurred to claim deduction under section 37(1). In presence of these facts, the explanation of the assessee that Chartered Accountant of the assessee advised him to do so, does not carry any weight without any evidence in this regard. It is worthwhile to note that the assessee *vide* letter dated 8-8-2008 given to the Assessing Officer, has stated that the business of hotel stood discontinued immediately on taking over the hotel premises, whereas in the return regarding the nature of business or profession, the appellant has written 'running of hotel business'. Such a statement given by the assessee is false and contradictory to the statements made before the Assessing Officer *vide* letter

dated 8-8-2008. It was not a case where two opinions about the applicability of section 37(1) or deductibility of impugned expenditure under section 37(1) were possible in view of unambiguous language of the section. The assessee would have challenged the disallowance in further appeal, which he failed to do.

- The Commissioner (Appeals) has relied upon the decision of Hon'ble jurisdictional High Court in the case of *CIT v. Escorts Finance Ltd.* [\[2010\] 328 ITR 44/\[2009\] 183 Taxman 453 \(Delhi\)](#) in this regard, which deals with the similar situation though about applicability of section 35D, against which no contrary decision is brought on record. The expenditure so incurred by the assessee are not on revenue account for the simple reason that it was not in respect of any continuing business, but in respect of making asset in a condition to be fit to be utilized for new business and hence, such expenditure were clearly of capital nature. In view of all these facts, there appears no *bona fide* in the explanation of the assessee, as contemplated in *Explanation 1* to section 271(1)(c). The Commissioner (Appeals) further observed that in the notes to account also, there is no mention of the payment of Rs. 73 lakh and the reasons for making this payment. No rebuttal has been given by the assessee to these findings of fact, which go to suggest that the appellant has not made a complete disclosure in terms of *Explanation 1* to section 271(1)(c). Therefore, the finding of the Commissioner (Appeals) that the assessee had made a false claim that he is engaged in the hotel business with motive to claim deduction of impugned expenditure falsely as revenue expenses was justified. The explanation offered by the assessee being not *bona fide*, the Authorities below have rightly applied *Explanation 1* to section 271(1)(c) in the peculiar facts and circumstances of the present case. In view of above discussion, it follows that it is not a case where the explanation given by assessee was *bona fide* and there was full disclosure of facts. The assessee has also not been able to substantiate the explanation offered by any credible evidence. Therefore, the penalty sustained by the Commissioner (Appeals) does not call for any interference in view of catena of other decisions relied by the first appellate authority.
- In the result, the appeal of the assessee was dismissed.