

Fine for traffic violation isn't deductible as business expenditure: Kolkata ITAT

Summary – The Kolkata ITAT in a recent case of Aparna Agency Ltd., (the Assessee) held that where assessee made payments for offences committed by its employees under Motor Vehicles Act, 1988, which were not compensatory in nature and for which assessee was vicariously liable, deduction in respect of same was not allowable under section 37(1)

Facts

- The assessee-company was acting as acquiring and forwarding agents. While computing income under the head 'income from business', the assessee claimed certain amount as distribution charges because assessee was acting as distributor of FMCG products.
- The Assessing Officer called upon the assessee to furnish vouchers in support of said expenses. Since the vouchers in support of the claim was voluminous, same were verified on a test check basis by the Assessing Officer. On such test checking, the Assessing Officer found that certain amount had been paid to State Government for violating provisions of Motor Vehicles Act, 1988.
- The Assessing Officer took a view that payments made for infraction of law could not be allowed as deduction under section 37(1). He also disallowed a part of distribution expenses due to non-availability of proper information in respect of same.
- In appellate proceedings, the assessee submitted that the payments were not against any proved violation/infraction of law but were merely a payment in settlement of a contemplated action charging the assessee with an offence. It was further submitted that since the payment was made purely with a view to avoid prolonged litigation, save time and litigation cost, it could not be said to be a payment which was hit by *Explanation* to section 37(1).
- The Commissioner (Appeals) rejected assessee's explanation and confirmed order passed by the Assessing Officer. With regard to the remaining disallowance, the Commissioner (Appeals) opined that the sample chosen by the Assessing Officer was a very small sample and on that basis the quantum of expenses disallowed was on the higher side. The Commissioner (Appeals) held that it would be just and proper to disallow 10 per cent of the distribution charges.
- On second appeal:

Held

- It is clear from the statutory provisions of the 1988 Act as well as the law laid down in various judicial pronouncements that payments made for any purpose which is an offence or which is prohibited by law and which is not compensatory in nature, cannot be allowed as a deduction under section 37(1), read with *Explanation* thereto. Perusal of the various statutory provisions of the 1988 Act under which the payments in question were made were for offences committed by the employees of the assessee for which the assessee was vicariously liable. These payments were not

compensatory in nature. Therefore, those sums cannot be allowed as a deduction. The order of the Commissioner (Appeals) is upheld to said extent.

- As far as the disallowance of the remaining sum sustained by the Commissioner (Appeals), the same deserves to be deleted. Admittedly, the sample vouchers in which the Assessing Officer found defects had registered vehicle numbers that were hired by the assessee for carriage of goods. This provided enough information for the Assessing Officer to make further enquiries. In the circumstances under which the carriage was hired by the assessee it is not possible to insist on all details being given in the voucher. The explanation of the assessee has not been found to be incorrect by the Assessing Officer or the Commissioner (Appeals). Therefore, the addition sustained by Commissioner (Appeals) to the extent it relates to disallowance of 10 per cent of total expenditure excluding the sums paid by way of penalty, has to be deleted.