

No disallowance u/s 40A(2) on basis that a professional couldn't perform multiple tasks for more than one concern

Summary – The High Court of Delhi in a recent case of Sigma Corporation India Ltd., (the Assessee) held that A part of professional payment made by assessee to a related party could not be disallowed by invoking provisions of section 40A(2) without taking into account reasonableness of expenditure having regard to prudent business practice

Facts

- During relevant year, the Assessing Officer disallowed 50 per cent of the payments made on account of professional remuneration to one 'P' who was a related party.
- The Commissioner (Appeals) took a view that in view of qualification of 'P' which were an engineering degree and MBA degree, the salary seemed to be reasonable. The Commissioner (Appeals) thus deleted the addition made by Assessing Officer.
- The Tribunal, however, restored the order passed by Assessing Officer.
- On appeal:

Held

- Whenever an Assessing Officer proposes disallowance, he has to examine the matter in a fair and reasonable manner and what should be borne in mind is that the provision is intended to check evasion of tax through excessive or unreasonable payments to relatives and associate concerns, and should not be so applied as to "cause hardship in *bona fide* cases".
- The Tribunal in the present case overlooked the materials that were to be taken into account, *i.e.* reasonableness of the expenditure having regard to the prudent business practice from a fair and reasonable point of view. The Assessing Officer's order nowhere sought to benchmark the expertise of 'P' with any other consultant and proceeded on an assumption that he could not have performed multiple tasks for more than one concern. Such a stereotyped notion can hardly be justified in today's business world where consultants perform different tasks, not only for one concern but for several business entities.
- A common example would be that of an accountant or a legal professional, who necessarily has to multi task and are recipients or retainers of payments from many concerns having regard to their special expertise. Likewise in other fields *i.e.* journalism, the medical profession etc. more than one entity may engage or retain a single professional on the basis of his experience, learning and expertise, unless there is a deeper scrutiny that involves comparable analysis of like situations (a highly difficult task), additions made under section 40A(2) would be suspect.

- In the circumstances, it is held that the conclusions of the Tribunal were not justified. The impugned order is accordingly set aside.