

Exp. incurred on construction of houses for the people affected by floods wasn't allowable

Summary – The Bengaluru ITAT in a recent case of Kanhaiyalal Dudheria, (the Assessee) held that Expenditure incurred on construction of houses handed over to people affected from flood, was not allowable as deduction under section 37(1)

Where assessee failed to prove that penalty debited in profit and loss account was not paid for breach of any provisions of law, Assessing Officer was justified in disallowing same

Facts

- The assessee was a partnership firm engaged in the business of extraction and trading of iron ore. It filed return claiming deduction of expenditure incurred towards construction of houses handed over to the State Government to help out people affected from flood.
- The Assessing Officer held that said expenditure was not incurred wholly and exclusively for the purpose of business and, therefore, not allowable as deduction under section 37(1).
- The Commissioner (Appeals), confirmed the order of the Assessing Officer.
- On second appeal:

Held

- The issue in appeal is whether the expenditure incurred in constructing houses in order to help people who were rendered homeless on account of unprecedented floods and handed over to the Government of Karnataka is allowable as deduction under section 37(1) or not. It is not disputed fact that this expenditure was incurred by the assessee voluntarily. In order to claim deduction under section 37(1) conditions to be satisfied are that a item of expenditure should not be an item of expenditure described in sections 30 to 36 and should not be described as capital expenditure or personal expenses of the assessee. It should be laid out or expended wholly and exclusively for the purpose of business or profession. Needless to mention, all the three conditions should be cumulatively satisfied.
- There is no dispute as to satisfaction of the first two conditions mentioned *supra*. The only dispute is regarding satisfaction of the condition that the expenditure was laid out and expended wholly and exclusively for the purpose of business. In order to claim deduction under section 37(1), it is not necessary to establish the necessity of incurring of such expenditure.
- But the onus lies on the assessee to prove that the expenditure was incurred for the purpose of business. Once the assessee discharges this onus, the assessee would be entitled to deduction under section 37(1). In the present case, no factual condition was laid by the assessee to establish that this expenditure was incurred for business purpose nor any attempt is discernible before the lower

authorities. Mere bald assertion that the expenditure was incurred for promoting business cannot be accepted without establishing the nexus between expenditure and business. Therefore, it amounts to application of income voluntarily towards charity which cannot be allowed as a deduction.

- Further, an important aspect to be noted here is that the assessee has handed over constructed houses to the Government of Karnataka in terms of MoU. It is not the case of the assessee that the assessee was granted mining license in consideration of expenditure incurred by the assessee. Needless to mention, these kind of contracts are opposed to public policy and void under the provisions of section 23 of the Contract Act. Therefore, it cannot be said that the appellant had incurred this expenditure wholly and exclusively for the purpose of business. The grounds of appeal filed by the assessee in this regard is dismissed.