

## Firm was eligible to claim exp. if it was disallowed in hands of partner claiming having incurred on behalf of firm

**Summary – The High Court of Gujarat in a recent case of Hitech Analytical Services., (the Assessee) held that where a partner of assessee-firm claimed allowance of certain expenditure in her hands and AO did not allow them and thereafter firm presented a revised computation before AO for allowance of said expenditure in its hands, expenditure in question, if found to be incurred for purpose of business of firm, same would be allowed in its hands**

### Facts

- For the assessment year 2012-13, a partner of assessee-firm filed the return declaring certain income and claimed certain expenditure to be allowed in her hands, which comprised of Audit fees, Bank Charges, Car Loan interest, Depreciation, Petrol expenses and Travelling expenses. She stated that the expenditure was incurred for the partnership business.
- The Assessing Officer opined that the partner's share in the profit of the partnership was exempt from payment of tax. The expenditure she had claimed was thus for the purpose of earning exempt income and, therefore, not allowable under section 14A. He, therefore, issued a show cause notice to the partner why such expenditure should not be disallowed.
- The partner in reply to the show cause notice took an alternative stand pointing out to the Assessing Officer's suggestion that the expenditure could be claimed in the hands of the assessee-firm.
- The Assessing Officer in the assessment of the partner did not allow the expenditure.
- In the meantime, the assessee-firm presented a revised computation of income before the Assessing Officer, in which the aforesaid expenditure was claimed by way of expenditure.
- The Assessing Officer completed the assessment of the assessee-firm under section 143(3). In such order of assessment, he did not grant the firm's claim for expenditure.
- Thereafter both the assessee-firm as well as the partner filed two separate revision petitions before the Commissioner under section 264. Their case jointly put forth was that the expenditure was incurred for the business of the firm and such expenditure, therefore, should have been allowed either in the hands of the partner or in the hands of the firm.
- The Commissioner disposed of the revision petitions by separate orders. In case of the partner, the Commissioner confirmed the view of the Assessing Officer that the expenditure was in relation to earning exempt income and, therefore, not allowable deduction. In case of the firm, the Commissioner opined that the expenditure could not be allowed for three reasons *viz.* (i) The assessee-firm had not revised the return and merely presented the revision of statement. This could not form the basis of a new claim. The expenditure could not have been claimed without filing the revised return. (ii) There was no evidence to establish that the expenditure was incurred by the partner wholly for earning the business income. The claim was not verified. The expenditure incurred by the assessee-firm and its partners being distinct, the expenditure by the partner could

not be allowed in the hands of the firm. (iii) The claim of the firm was against the principle of accountancy. The accounts of the firm did not reflect the expenditure and, therefore, could not be granted.

- On writ filed by both partner and assessee-firm:

#### Held

- One sees no error in the view of the Commissioner when he holds that the expenditure could not have been allowed in the hands of the partner. Even the partner is unable to point out any manifest error in the view of the Assessing Officer and the Commissioner since in the hands of the partner, the expenditure would be related to earning exempt income. Nevertheless the claim of the partner was not confined to the expenditure being allowed in her hands. An alternative claim was put forth by the partner and the assessee-firm that at any rate such expenditure cannot be disallowed in the hands of the firm. In this regard, one may recall that even during the assessment of the partner, a stand was taken that the Assessing Officer of the firm may allow such expenditure. Therefore, after the Assessing Officer passed the order of assessment in case of the partner on 13-01-2015, the partnership firm had filed a revised computation of income before the Assessing Officer before whom the assessment of the firm was still pending. To the extent, when the Commissioner holds that such expenditure would not be allowed in the hands of the firm also, one is unable to accept the stand.
- The non-filing of the revised return by the firm could not have been the ground for rejection of the claim. Even if the powers of the Assessing Officer could be seen to be restricted in absence of any revised return, nothing prevented the Commissioner from examining the issue and if need be to have further inquiries made. First objection of the Commissioner was, therefore, not valid.
- Second objection of the Commissioner appears to be that there was no evidence to prove that the expenditure claimed by the partner in the return was incurred wholly for earning business income of the firm. Merely because the claim of the expenditure being incurred wholly for the purpose of the partnership business was not verified, cannot be the ground for rejecting the claim. The occasion arose before both the Assessing Officers, that of the partner as well as of the firm, to examine the veracity of the expenditure and the claim of the partner and the firm that it was expended wholly for the purpose of the business of the firm. In case of the partner the claim was rejected not on the ground that the expenditure was not wholly for the purpose of business of the firm but on entirely different ground. In case of the firm the claim was not even examined, despite which, if the Commissioner desired to examine it or have it examined, it was always open for him to call for a remand report or place the issue back before the Assessing Officer for passing an appropriate order.
- The last objection of the Commissioner was that the expenditure was not shown in the accounts of the firm and, therefore, allowing the expenditure would run counter to the accountancy principle. The Act proceeds on the fundamental principle of taxing real income. The accounts cannot change taxability or non-taxability of a certain receipt which depends on the nature of the receipt and the legal principles applicable.

- In the result, the writ petition filed by the partner was liable to be dismissed.
- The order passed by the Commissioner in the case of assessee-firm deserved to be set aside. It is held that the expenditure in question, if found to be wholly and exclusively incurred for the purpose of business of the firm and by or on behalf of the firm, the same would be allowed in the hands of the firm.