

Exp. incurred on director education not deductible without his commitment to serve co. post-education

Summary – The Mumbai ITAT in a recent case of Hunumesh Realtors (P.) Ltd., (the Assessee) held that where assessee company incurred expenditure on education of its director at abroad, in absence of commitment/bond executed by said Director to serve assessee company post his education so that assessee could reap benefits of his education for com business, expenditure was not allowable as business expenditure

Facts

- The assessee, builder & developer, filed its return of income. The assessment under section 143(3) was framed by Assessing Officer *vide* assessment order wherein income assessed at certain amount.
- The Pr. Commissioner issued show-cause notice under section 263 to the assessee. On ground that due to improper verification of the expenses towards 'training expenses' of one of directors, namely, AK of the assessee company by the Assessing Officer had rendered the impugned assessment order under section 143(3) as erroneous and prejudicial to the interest of Revenue which made it amenable to revisionary jurisdiction under section 263. On perusal of the record, the Pr. Commissioner noticed that assessee had paid an amount as training expenses to University of Pennsylvania, USA and same were allowed as business expenses. The Assessing Officer had not applied his mind to the relevant material before allowing the claim of the assessee. It was also observed that no enquiry was made by the Assessing Officer as well there was no discussion in the assessment order passed by the Assessing Officer under section 143(3).
- In instant appeal the assessee contended that the assessment order under section 143(3) was passed by the Assessing Officer after making due enquiries, thus, the same could not be called as erroneous or prejudicial to the interest of revenue. Hence, the same could not be interfered by Pr. Commissioner by invoking revisionary powers under section 263. The assessee had also submitted that during the course of proceedings under section 143(1), complete list of Directors including details of AK was also submitted. It was claimed that complete details were submitted before the Assessing Officer and since the Assessing Officer had taken a view that these training expenses were related to the business of assessee and was allowed under section 37(1) as business expenses incurred wholly and purposes of the business of the assessee, the same could not be interfered by the Pr. Commissioner by invoking his extraordinary revisionary powers under section 263.

Held

- It is observed from the audited financial statements of the assessee company that the assessee's income from operation during the previous year relevant to the impugned assessment year was "NIL". The assessee has only earned other income on account of interest on fixed deposit during the previous year relevant to the impugned assessment year. The assessee company is holding investments. The assessee is merely an investment company mainly holding securities of group

companies. There are no employees employed by the assessee company and it has three Directors on the Board of which one is AK. The said AK was inducted as Director of the assessee-company and just two days post his induction as Director of the assessee-company, Resolution was passed by Board of Directors of the assessee company approving education expenses of AK, Director of the assessee company to be incurred by the assessee for his education at University in USA. On the strength of the Board Resolution and invoices issued by University of Pennsylvania, USA, it is claimed by the assessee that the said expenses incurred on education of said newly appointed Director namely AK at University of Pennsylvania, USA are business expenses of the assessee company which are wholly and exclusively incurred for business of the assessee-company satisfying the mandate of Section 37(1). No appointment letter issued by assessee-company in favour of said AK was filed nor any agreement entered into by the assessee company with said AK to reflect terms and conditions including job profile of his appointment are filed by the assessee. No document was placed on record to reflect what are the roles, responsibilities and job profile of him. The period of appointment of said AK was also not on record whether it will extend beyond his period of education at University of Pennsylvania, USA was also not on record. No commitment/bond executed by said AK, Director was there to serve the assessee-company exclusively post his education for certain period of time so that the assessee company could recoup its expenses on his education and reap the benefits of his education for companies business post completion of his education with University of Pennsylvania, USA for certain number of years. Even business plans to develop the assessee company and role which AK, Director after completion of his education in USA can play in developing the assessee company's business were submitted. No Vision statements/projections of the future plans of the assessee company's business were placed. Even what happened post completion of education of said AK in USA was not on record as to whether he came back to India and joined the assessee company to play a larger role to enhance business of the assessee-company was not put on record by the assessee. On perusal of the audited financial statements, it could not be found that any remuneration was paid to the said Director, AK during the year under consideration as no salary is found debited in the audited P&L account even Directors fee paid for attending board meetings also did not found mentioned in the Profit and Loss Account. It was also not on record as to what reimbursements/damages which the assessee will be entitled to recover from said AK in case he breaches his continuation to serve the assessee company post completion of his education with University of Pennsylvania, USA. No agreement entered into by the assessee company with AK regarding his term of appointment as well likely benefit to arise to the assessee from these education expenses paid by the assessee company to University were brought on record. It was not shown by the assessee what are the roles, responsibility and job profile of AK being performed for the assessee company and on what terms and conditions he was brought in as Director of the assessee-company. Even course content of the course being studied by said AK and its correlation with the assessee's business was not brought on record by the assessee before the Assessing Officer. It is only before the Bench at the fag-end of the hearing, it is brought on record by

for the assessee that said AK was pursuing MBA course and that too through the statement made by the assessee. The said expenses were reflected by the assessee under the head 'training expenses' in the audited financial statements as also before the Assessing Officer it was claimed that these expenses are towards training of the said Director, but these expenses are pertaining to the formal education of AK, Director which will lead to the award of MBA degree from USA in favour of AK on the successful completion of education programme. The assessee has used the nomenclature of these head of expenses as 'training expenses' in the books of account and audited financial statements which based on material on record is not a correct description of these expenses used by the assessee, rather these are the education expenses incurred by the assessee company which will lead to award of formal MBA degree in favour of AK by University of Pennsylvania, USA. The dictionary meaning of both the words viz. Education and training are different, wherein 'Education' is defined as the system of teaching people, usually at a school or college, while dictionary meaning of training is the process of learning the skills that is needed for a particular job or activity. Thus, as could be seen there is a vast difference in the meaning of both, while education is more concerned with formal education at school or college leading to award of degree etc in favour of pupil which permanently enhances the intellectual trait of a person, while training is for improving skills related to a job. In this case, the expenses were incurred for formal education leading to formal degree being MBA awarded in favour of AK, the expenses were incurred by the assessee which definitely required greater scrutiny by the Assessing Officer before allowing the same as business expenses of the assessee and to see that mandate of section 37(1) was satisfied. Since, relevant and tangible material was not placed before the Assessing Officer by the assessee during the course of assessment proceedings under section 143(3) read with section 143(2), the opinion formed by the Assessing Officer could not have been proper in the absence of relevant material on record as the Assessing Officer could not have made proper verifications. Even, the course content of the said course was not produced before the AO despite been asked by the Assessing Officer during the course of assessment proceedings under section 143(3) read with section 143(2). Thus, in the absence of relevant and vital information as detailed above, the Assessing Officer could not have made proper verifications which ought to have been made to have come to the conclusion that these are business expenses allowable under section 37(1) being incurred wholly and exclusively for the purposes of business of the assessee, which has certainly rendered the Assessing Officer assessment order as erroneous as well prejudicial to the interest of revenue amenable to interference by Pr. Commissioner by invocation of revisionary powers under section 263 as the said expenses stood allowed as business expenses despite being absence of relevant and tangible material on record before the Assessing Officer. The enquiry conducted by the Assessing Officer was clearly vitiated due to absence of such crucial and vital information on record in the absence of which and based on material which was on record, the Assessing Officer could not have formed an opinion and have come to the conclusion that these are business expenses incurred wholly and exclusively for the purposes of business satisfying the mandate of section 37(1), making assessment

order being erroneous and prejudicial to the interest of Revenue liable to revisionary powers under section 263 by the Pr. Commissioner. The Pr. Commissioner had rightly invoked the provision of section 263 by setting aside the assessment order passed by the Assessing Officer under section 143(3) and directing the Assessing Officer to pass *de novo* assessment order after verifications as per directions of the Pr. Commissioner under section 263.

- In the instant case, the material placed by the assessee before the Assessing Officer was not sufficient to come to the conclusion that the expenses incurred by the assessee on education of newly inducted Director were for the business purposes allowable under section 37(1). The view which was adopted by the Assessing Officer based on material available on record could not have been adopted by the Assessing Officer as material was not sufficient to come to such conclusion as no proper enquiry/verifications were conducted by the Assessing Officer making assessment order erroneous so far as prejudicial to the interest of Revenue amenable to exercise of revisionary powers by the Pr. Commissioner under section 263. In the instant case circumstances exists for invocation of revisionary powers by the Pr. Commissioner under section 263 as the Assessing Officer could not have reached to the conclusion based on the material on record during assessment proceedings that these expenses incurred by the assessee were business expenses incurred wholly and exclusively for the purposes of business of the assessee company satisfying the mandate of section 37(1) as unfortunately there are large number of unanswered question which are absolutely necessary to arrive at decision that these expenses satisfy the mandate of section 37(1). The Assessing Officer even did not have course content with him before arriving at the conclusion that these are business expenses. Thus, there was complete lack of application of mind by the Assessing Officer before allowing these education expenses as business expenses of the assessee under section 37(1). In any case, the assessee has also used wrong description of these expenses being training expenses in its audited financial statements as well in the replies submitted before the Assessing Officer, while these were education expenses incurred for doing MBA at University of Pennsylvania, USA leading to award of formal degree of MBA and we have already seen that there is a vast difference between the two. Moreover, *Explanation 2* to section 263 is in place now with the amendment brought in the Statute by the Finance Act, 2015 with effect from 1-6-2015. On carefully going through other case laws cited as well written submissions filed by the assessee in response to the Commissioner, department representative relying on certain case laws. One had also carefully gone through case laws cited by the Commissioner, departmental representative before arriving at the decision.
- Thus, based on above detailed discussions and reasoning in preceding para's, there is no infirmity in the order passed by the Pr. Commissioner under section 263, which is sustained/affirmed.