

High salaries paid to doctors who were reputed professionals in their field couldn't be held as excessive: ITAT

Summary – The Ahmedabad ITAT in a recent case of Hemato Oncology Clinic (Ahmedabad) (P.) Ltd., (the Assessee) held that where assessee-company paid higher salaries to doctors who were reputed professionals in their fields, payment of salaries could not be held to be excessive and unreasonable

Facts

- The assessee was a company engaged in running a clinic. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that, out of the total professional receipts, 84 per cent of amount being paid to four doctors, and 16 per cent amount being paid to the remaining seven doctors, showed that the payment to the four doctors, who were promoter directors as well and, as such, covered by the definition of 'specified persons', was excessive and unreasonable. Thus, he disallowed 15 per cent of payments made to these four doctors, under section 40A(2).
- On appeal, the Commissioner (Appeals) deleted the aforesaid disallowance by observing that it was undisputed fact that the services of professional doctor was not comparable with any other doctor of a similar line because of various factors including the skills, competency, experience and its popularity. Therefore, the comparison of any payment to a doctor who was promoter having vast experience of a long duration could not be compared with a junior doctor employed in the company. The Assessing Officer had made the comparison of the four promoter doctors with the professional fee of the employee doctors who were not at par. The Assessing Officer had not make out the case that in what manner the provisions of section 40A(2)(b) were applicable on the facts of the case. In the instant case, it was found that the average increase in the professional fee of the promoter directors was 42 per cent as compared to preceding year. But at the same time, there was also substantial increase of 56 per cent and 64 per cent in the professional fee with regard to the doctors other than directors. Even, here the increase of professional fee in the case of doctors other than promoter directors as mentioned above was much higher than the average increase of the professional fees of the promoter directors. So, the comparison of scale as adopted by the Assessing Officer in respect of doctors was not correct and justified. By no parameter the payment of professional fee to the promoter directors was unreasonable and excessive, having regard to the fair market value of the services for which payment was made. The taxes on such professional receipts were paid by those from doctors at the maximum marginal rate as was applicable in the case of assessee and this was a revenue neutral exercise. Therefore, no adverse view was required to be taken.
- On second appeal:

Held

- There is no finding by the Assessing Officer about as to what constitutes fair market price of the services rendered by the promoter directors and that he has simply proceeded to make an *ad hoc* disallowance at the rate of 15 per cent out of the payments made to these persons.
- Even on merits of the matter, the case of the revenue must fail. There is an inherent fallacy in the approach of the Assessing Officer. In the cases of seasoned professionals - whether doctors, lawyers, painters or actors, such comparisons, as made by the Assessing Officer, are uncalled for and their remuneration must depend on their market worth, and determination of such market worth was uninfluenced by what other professionals in their area of expertise earn. The Assessing Officer could not challenge the payments made to four doctors, who were admittedly seasoned and reputed professionals in their fields, on the basis of what other doctors are being paid in that area of expertise. This is very simplistic or rather naive approach which cannot meet any judicial approval. The Commissioner (Appeals) was indeed justified in reversing the stand of the Assessing Officer.
- One must also bear in mind the fact that simply because a payment is 'high', it need not be 'excessive' too, but then the Assessing Officer has used the expressions 'high' and 'excessive' rather interchangeably. The expression 'excessive' has to be considered *vis-a-vis* fair market value of such services, as statutory provisions categorically state when someone makes a payment of say Rs. 50 lakhs for an appearance by a very eminent lawyer, it may be high, but as experience tells, when someone can actually afford it, it is not really excessive. The mere fact that there are equally experienced, even if not equally successful lawyer, are available for much lower fees, would not imply that the payment to the very eminent counsel is excessive.
- In view of the above discussions, as also bearing in mind entirety of the case, the relief granted by the Commissioner (Appeals) is upheld and the interference in the matter is decline to.