

No question of law involved if lower authorities held that commission paid to directors wasn't excessive: HC

Summary – The High Court of Madras in a recent case of Madras Engineering Industries (P.) Ltd., (the Assessee) held that where Assessing Officer held that commission paid by assessee company to its director was excessive or unreasonable, thus, liable for disallowance under section 40A(2), however, Commissioner (Appeals) and Tribunal concurred in their finding that commission paid by assessee was not excessive or unreasonable keeping in view benefit derived by assessee due to services rendered by its director, since this was a subjective decision having regard to facts of case, there was no substantial question of law involved in appeal

Facts

- The assessee paid commission of certain amount to EKP, the Chairman cum Managing Director of the assessee towards profit commission.
- The Assessing Officer made disallowance in respect of the amount of commission paid to EKP under section 40A(2).
- On appeal, the Commissioner (Appeals) observed that the Assessing Officer was required to consider the fair market value of the services rendered, the benefit accrued to the assessee and the legitimate needs of the business of the assessee before invoking the provisions of section 40A(2). The Commissioner (Appeals) observed that, further, the legitimate needs of the business or the benefits accrued to the assessee were to be considered from the standpoint of a prudent businessman and could not be left to the Assessing Authorities. He found that the Assessing Officer could not have decided what the assessee should do and pay. Disallowance could be made under section 40A(2) only when warranted and when the conditions of the said section were satisfied. The Commissioner (Appeals) also took note of the fact that EKP was assessed to tax in the highest tax bracket and, therefore, there was no loss of revenue with regard to the expenditure incurred on account of profit commission paid by the assessee. Accordingly, the Commissioner (Appeals) held that the case of the assessee did not call for disallowance of profit commission. The profit commission incurred by the assessee was reasonable keeping in view the legitimate needs and benefit derived by the assessee due to the services rendered by EKP.
- On appeal, the Tribunal also concurred with the finding of the Commissioner (Appeals) that the profit commission paid to EKP was neither unreasonable nor excessive.
- On appeal to the High Court:

Held

- An appeal lies under section 260-A on a substantial question of law. There not only has to be a question of law but a substantial question of law. There is no question of law involved in these appeals, much less any substantial question of law.

- Right of appeal is not automatic. Right of appeal is conferred by statute. When statute confers a limited right of appeal only in a case which involves substantial questions of law, it is not open for this Court to sit in appeal over the factual findings arrived at by the Appellate Tribunal.
- In the instant case, section 40A(2)(a) provides that if the officer is of opinion that expenditure to *inter alia* a director of a company was excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment was made or the legitimate needs of the business, occupation of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as was considered by him to be excessive or unreasonable would not be allowed as a deduction. There is no yardstick or guideline for judging when the expenditure incurred by the assessee would be excessive or unreasonable. The decision is left to the Assessing Officer. The decision is a subjective decision having regard to the facts of the case. There is no question of law far less any substantial question of law involved in instant appeal.
- The appeals are, accordingly, not entertained and the same are dismissed.