

## **Exp. incurred on education of partner's in Foreign Country was allowable if it was linked with business of firm**

**Summary – The High Court of Madras in a recent case of Aswathanarayana & Eswara., (the Assessee) held that Expenditure by firm on partner's foreign education was to be allowed when post graduate course underwent was directly related to profession carried on by firm and after completion of course, expertise of partner helped assessee in securing several important contracts**

### **Facts**

- The assessee was a professional firm of Consulting Engineers and Architects.
- The Assessing Officer disallowed a sum of Rs. 2.66 lakhs being foreign education and training expenses of a partner as being not related to the business of the firm.
- Before the Commissioner (Appeals), it was submitted that the higher studies and training, for which the expenditures were incurred, related to the professional activities of the firm and there was a direct nexus between the purpose for which the expenditures were incurred and the activities of the firm. However, the Commissioner (Appeals) rejected said pleas and confirmed the Assessing Officer's views.
- On further challenge before the Tribunal, the assessee met with the same fate.
- On appeal to the High Court:

### **Held**

- There was no material placed by the revenue to demonstrate that any part or whole of the stand taken by the assessee was either false or untrue. Viewed from this angle, this Court is fully satisfied that this is not a case where there is a misuse of the provision of section 37 to foist a personal expenditure as a business expenditure. Therefore, that the expenditure was allowable and the authorities concurrently erred in not taking into consideration the factual position placed, in spite of specific grounds raised before the Tribunal, which would render the decision perverse.
- Perusal of the grounds of appeal filed before the Commissioner (Appeals) shows that the assessee has specifically raised the point regarding non-consideration of the materials placed before the assessing authority. Yet the Commissioner (Appeals) did not make an endeavour to examine the stand taken by the assessee, resulted in non-consideration of the materials placed. This undoubtedly would be perversity writ large on the face of the orders passed by the Assessing Officer and the Commissioner (Appeals). Therefore, the assessee cannot be non-suited merely because, he has not used the expression 'perverse' in the grounds of appeals before the Commissioner (Appeals) as well as before the Tribunal. There is no dispute raised by the revenue with regard to the factual position that the concerned partner went abroad for completion of the higher studies/education and on his

return continued with the firm. Non-consideration of the factual issues, which are germane and which ought to have been considered, leads to perversity. Thus, the Tribunal committed serious error of law thereby vitiating the entire proceedings more particularly, the aspects which goes to the root of the matter.

- In the result, the tax case appeal is to be allowed.