

Where assessee provided evidences towards payment of gratuity - no disallowance is warranted

Summary – The Delhi ITAT in a recent case of Indus Towers Ltd., (the Assessee) held that where assessee provided evidences towards payment of gratuity - no disallowance is warranted

Facts

- The assessee had paid gratuity to its employees and certain employees which were transferred to assessee from its group companies.
- The Assessing Officer was of view that the assessee could not prove that the expenditure was incurred wholly and exclusively for business purposes and disallowed this deduction.
- On appeal, the Commissioner (Appeals) held that payment of gratuity was a contractual obligation, hence, allowable under section 37(1).
- On revenue's appeal to the Tribunal:

Held

- The ITAT held that the assessee was required to pay 'ex-gratia/gratuity' amount in terms of the terms and conditions of appointment for employees.
- Gratuity was actually paid and therefore, if the entire amount is not allowable under section 36(1)(v), the balance amount would necessarily have to be allowed as a business expenditure under section 37 and also that section 40A(7) has no application when there was an actual payment to an approved gratuity fund.