



Amount of expenses disallowed in the hands of the Company cannot be added again in the taxable income of the Director of the Company.

Background

The Income-tax Appellate Tribunal, Mumbai¹ has held that an amount disallowed in the hands of the Company for corporate tax purposes, should not be taxed again in the hands of its Director as the same amount cannot be taxed twice.

Facts of the case

- Mrs Bakhtawar B Dubash & Mrs Sudha D Dubash ('tax payer'), Director of M/s Trans Impex Pvt Ltd ('Company') had traveled outside India.
- The travel expenditure on the said foreign tours were partly incurred by the Company and partly by a division of the Company.

Issue before the Tribunal

Whether expenses on the said foreign tours disallowed in the hands of the Company as non business expenditure for want of evidence to prove genuineness of expenditure incurred as wholly and exclusively for business purpose, can be considered as a taxable benefit in the hands of the taxpayer?

¹ Mrs. Bakhtawar B Dubash v. DCIT, Mumbai (ITA No. 4031/Mum/03), Mrs. Sudha D Dubash v. DCIT, Mumbai (ITA No. 4032/Mum/03)

Tax payer's contention

It was contended that:

- Tax payer is not an employee of the Company.
- No amenity or benefit has been provided free of cost by the Company.
- No payment was made by the Company in respect of goods, services or facilities provided by the Company.
- There was no evidence to show that foreign tours undertaken in the capacity of a Director was not for the purpose of the business of the Company.
- As travel expenditure was not allowed in the hands of the Company, the same cannot be considered taxable in the hands of the Director, as this would result in taxing the same amount twice.
- The provisions of Sections 2(24)(iv)², 17(2)(iv)³ and 28(iv)⁴ of the Income-tax Act, 1961 ('the Act') are not applicable in the instant case.

Tax officer's (TO) contention

- The tax payer was paid salary as an employee of the Company. Therefore, expenditure incurred by the Company should be considered as a taxable perquisite in the hands of the tax payer in view of the provisions of Section 17(2)(iv) of the Act.
- Onus is on the tax payer to establish that foreign tours were for business purposes and not personal visits.

² Section 2(24)(iv): Income includes the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a Director or by a person who has a substantial interest in the company, or by a relative of the Director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the Director or other person aforesaid.

³ Section 17(2)(iv): Perquisite includes any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee.

⁴ Section 28(iv): Income to be charged under the head "Profits and gains of business or profession" would include the value of any benefit or perquisite, whether convertible into money or not arising from business or the exercise of a profession.

- Since neither the Company nor the tax payer could prove that travel expenses were for business purpose and not for personal purpose of the tax payer, the amount added in the Corporate tax return of the Company, u/s 28(iv) of the Act is income in the hands of the tax payer.

Decision of CIT(A)

The CIT(A) confirmed the decision of the TO.

Tax department's contention before the Tribunal

The addition made by TO and confirmed by CIT (A) should be upheld and the fact that the taxpayer are carrying on business or profession or not is immaterial.

The Tribunal Ruling

- The provisions of Sections 2(24)(iv), 17(2)(iv) and 28(iv) of the Act are not applicable to the tax payer.
- It is a settled proposition of law that an amount can be taxed only once and not twice.
- In the instant case, since the travel expenses have already been taxed in the hands of the Company, by disallowing the corporate tax deduction, the same cannot be taxed again in the hands of the tax payer as taxable benefit/perquisite.

Our Comments

This decision reiterates that an amount taxed once cannot be taxed again. In other words, there cannot be an economic double taxation of the same income. However, it is important to examine the facts and circumstances of each case before taking a position.

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