

Disallowance of expenditure paid to holding company in absence of documents disallowed under sec. 40A(2)

Summary – The High Court of Karnataka in a recent case of Kesarval Beverages Ltd., (the Assessee) held that where assessee-company paid certain amount to its holding company towards services rendered by it and claimed deduction of same, since assessee had not furnished calculation and other material in terms of section 40A(2), disallowance of 80 per cent of expenditure under section 40A(2) was justified.

Facts

- The assessee-company was a subsidiary of a company 'U'. It paid a certain amount to the corporate management division of 'U' towards services rendered by it and claimed deduction of the same.
- The Assessing Officer called upon the assessee to furnish particulars of services rendered by the corporate management division of 'U'. However, the assessee had not produced the required particulars. Thereupon the Assessing Officer disallowed the total expenditure in question.
- On appeal, the Commissioner (Appeals) allowed 10 per cent of the expenditure and disallowed the balance under section 40A(2).
- On second appeal, the Tribunal confirmed the order of the Commissioner (Appeals).
- On appeal to High Court, the Court held that the services were certainly rendered by the corporate management division of 'U' in the matter of business activity. The expenditure incurred by the assessee was nothing but a business expenditure. However, it remanded the matter to the Tribunal to consider as to whether such expenditure was reasonable or unreasonable in terms of section 40A(2). The Court had given opportunity to the assessee to furnish the calculation or any other material in items of section 40A(2).
- After such remand, the Tribunal in turn remanded the matter to the Assessing Officer.
- The Assessing Officer called upon the assessee to furnish the calculation or any fresh material. However, the assessee did not produce any calculation or fresh material. It contended that it was entitled to the deduction of expenditure, which it was claiming.
- The Assessing Officer held that the assessee had not produced any additional evidence in support of its claim and only submitted those papers which were filed by it during the course of original assessment. It had not come up with any evidence to prove the reasonableness in the matter of expenditure incurred. It had also not furnished any calculation or any other material in terms of section 40A(2) as per the directions of the High Court. The Assessing Officer, therefore, allowed 20 per cent of the expenditure incurred by the assessee and disallowed the balance under section 40A(2).
- Both the Commissioner (Appeals) and the Tribunal confirmed the order of the Assessing Officer.
- On appeal to High Court:

Held

- The assessee is claiming deduction of the expenditure incurred. In the earlier round of litigation, the Court held that the assessee is entitled to said deduction as business expenditure. The question is whether the assessee is entitled to claim the entire amount. It is in this context that when the Commissioner (Appeals) in the earlier round of litigation held that the assessee was entitled to deduction of 10 per cent of the expenditure and the said order was confirmed by the Tribunal, the High Court was of the view that it is not proper and, therefore, the order of the Tribunal was set aside and the matter was remanded. While remanding the matter, the Court categorically held that the assessee is at liberty to furnish calculation or any other material in terms of section 40A(2). Further it directed the Tribunal to consider as to whether such expenditure incurred was reasonable or unreasonable in terms of section 40A(2) with regard to quantum.
- It is the contention of the assessee that section 40A(2) is not applicable to the instant case. Once a direction is issued and it has become final, it is not open to the assessee to say that section 40A(2) is not applicable. Therefore, the authorities were bound to determine the expenditure incurred in terms of section 40A(2). The Court in the earlier round of litigation gave liberty to the assessee to furnish calculation or any other material. Admittedly no calculation was given and no additional evidence was produced. The assessee relied on the materials it has already produced. The Assessing Officer looked into the same and not being satisfied passed the order by holding that the amount paid by the assessee to the holding company constitutes business expenditure. He has upheld the claim of the expenditure of 20 per cent. In the absence of the assessee substantiating the claim to the full extent, it cannot be said that the authorities have committed error in not allowing the entire claim. In spite of giving opportunity to the assessee, it has not produced any calculation or the documents. Therefore, the order passed by the Tribunal declining to allow the claim of the assessee with regard to remaining portion of the amount cannot be found fault with. Therefore, the appeal was liable to be dismissed.