Tenet Tax & Legal Private Limited

Tenet Tax Daily
August 22, 2017

No disallowance if tax paid by employer on perquisites was grossed up while computing employee's salary

Summary – The Kolkata ITAT in a recent case of Joy Partnership, (the Assessee) held that where employer had paid tax on tax perquisite provided to employee and had not claimed exemption under section 10(10CC), no disallowance of expenditure could be made invoking Section 40(a)(v)

Facts

- The assessee was a non-resident partnership firm. It entered into a contract with a Government undertaking SECL for providing services at a coal mines of SECL. The scope of services include supervision and assistance in erection and commissioning of SECL's equipment *etc*. Later on, the assessee also entered into other contracts with other concerns for providing services at their Collieries.
- The Assessing Officer completed the assessment by making the disallowance under section 40(*a*)(*ia*). The Assessing Officer had observed that 'tax' on 'tax perquisite' being non-monetary in nature and paid by the assessee on behalf of its employees, was not to be added again for the purpose of computation of taxable income of the employee and, consequently, it was not an admissible expenses in the hands of the employer (*i.e.* the assessee) under section 40(*a*) (*v*) and this way the Assessing officer made disallowance of Rs. 30,16,461.
- On appeal, the Commissioner (Appeals) observed that the statement furnished by the assessee during the course of assessment proceedings which showed reconciliation between the amount debited under the head 'payroll cost' had not shown in gross salary in Form No.16 issued to the employees read with form No.24. The Commissioner (Appeals) observed that reconciliation statement included an amount of Rs.30,16,461 which stood debited to the profit and loss account of the assessee due to grossing up but was not included in the gross salary of the expatriate employees.
- The assessee explained that the said amount represents a part of the tax borne by the assessee on salary of its expatriate employees, which was computed in accordance with the method stated in the decision rendered by the Special Bench of the Delhi Tribunal in *RBF Rig Corpn. LIC (RBFRC)* v. *Asstt. CIT* [2007] 109 ITD 141/165 Taxman 101 (Mag.). Regarding the applicability of the provisions of section 40(*a*)(*v*), the Commissioner (Appeals) held that section 10(10CC) applies in case of non-monetary perquisite where no grossing up has been done while computing the taxable income of the expatriate employees. The grossing up had been done while computing the taxable salary of the expatriate employees and, thus, there could not be any question of application of section 10(10CC) and, accordingly, no disallowance can be inflicted under section 40(*a*)(*v*) and, accordingly, the Commissioner (Appeals) deleted the addition.
- In the revenue's appeal before the Tribunal, the assessee submitted that in instant case, the exemption under section 10(10CC) was not applicable as the tax borne by employer had already been grossed up. Moreover, exemption under section 10(10CC) had also not been claimed .On

persuing the same ,it would be clear that the assessee had paid tax on tax perquisite and not claimed exemption under section 10(10CC).

Held

- The exemption under section 10(10CC) is not applicable as the tax borne by employer has already been grossed up. Moreover, exemption under section 10(10CC) has also not been claimed by the assessee. The assessee has paid tax on tax perquisite and not claimed exemption under section 10(10CC). Therefore, there cannot be any disallowance under section 40(*a*)(*v*) and, hence, the order of the Commissioner (Appeals) is to be confirmed.