

Dangers of Accompanying Wife on Foreign Trips

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< EXECUTIVE SUMMARY >

◆ The purpose of this write up is not to give warning on the splurging habits of the accompanying wife on the foreign land but to discuss the allowability of the expenses incurred by the companies/ firms on the accompanying wives of the executives, partners or employees on foreign trips and the vulnerability of such an item of expense being taken

as the income in the hands of the accompanying wife by her assessing officer. Firstly the question of allowability of such expenses in the hands of the companies/firms shall be dealt with. It is pertinent to note here that expenses incurred on the accompanying wife is claimed as a business expense under section 37(1) by the sponsoring concern.

WIVES ACCOMPANYING SICK HUSBANDS- GUJARAT HIGH COURT'S VIEW

The torchbearer in this category is the Gujarat High Court where this issue had perhaps for the first time cropped up in the year 1975 which was the International Women's year. Writing the judgment on behalf of the Bench, Justice B.K. Mehta (as His Lordship then was), rejecting the reference on behalf of the assessee company in **Bombay Mineral Supply Co. (P) Ltd's case (1985) 153 ITR 437/23 Taxman 549**, held-

"However chivalrous we may be inclined to be in this international women's year, we reluctantly feel inclined to reject this reference in the matter of disallowance of the foreign tour expenses of the wife of the Managing Director of the assessee company for obvious reasons".

The facts before the court in this case were that the Managing Director of the assessee company had under-

taken a tour to Japan for business purpose but since he was keeping indifferent health, he took his wife to look after him during the tour.

The Court held that the expenditure was in the nature of personal expense and therefore, not allowable as business expense.

MADRAS VIEW

Similar issue arose before the Madras High Court in **CIT vs. T.S. Hajee Moosa & Co. (1985) 153 ITR 422/22 Taxman 250**. In this case, the wife accompanied the partner of the assessee firm and her foreign tour expenses were claimed as business expenditure. Here also it was claimed that the husband had indifferent health and it was necessary for his wife to accompany him. The assessee's case found favour with the AAC who also observed that modern trend requires the wives of the top executives to accompany their husbands on foreign trips and such expenses are wholly and exclusively incurred for business purposes. The AAC also noted that the wife was trained in modern designs and that helped the growth of business as the export sales went up as a result of the tour. On further appeal by the

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revenue, Tribunal held that the role played by the wife of the partner, who was also on tour as a “nurse”, would be as much a business purpose, as the tour itself.

On reference by the revenue, the Madras High Court held that the state of health of a person is not in any way related to the business activities carried on by him. The expenses incurred for availing of the services of the attendant would be only to satisfy or meet the personal need and in that context, it is really immaterial whether the person concerned avails himself of the services of his wife or that of a stranger.

Responding to the AAC observation that the wife of the partner was trained in modern designs and the tour along with her husband helped the growth of the business of the assessee, the Court held that there was absolutely no material on the basis of which the AAC had come to such conclusion. Treating with disdain the finding of the Tribunal in this regard, the court held that it had recorded a finding that the foreign tour of the partner in the company of his wife was successful and helped the growth of the business of the assessee without ascertaining whether there was any basis or material in support thereof. It had merely put its rubber stamp on such finding of the AAC. Relying upon the Supreme Court judgement in **CIT vs. Jain (1973) 87 ITR 370**, the High Court held that the Courts have jurisdiction to interfere with the findings of the Tribunal if it appears that its finding is based on no evidence or where the finding is inconsistent with the evidence or contradictory or it has acted on material partly relevant and partly irrelevant or where the Tribunal draws upon its own imagination and imports facts or bases its conclusions on mere conjectures and surmises. In such cases, the Court held, the findings arrived at are vitiated.

Earlier in the Judgement, the High Court also reverted to the provision of sec. 37(1) of the Act which provides for the allowance of any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession. Interpreting the provision, the Court held that the expression “wholly” has been used with reference to the quantum, while the expression “exclusively” refers to the nature or the purpose of the activity in which the expenditure is incurred. If there is dual purpose, the expenditure would not qualify for allowance as it will cease to be wholly and exclusively laid out for business purposes. Relating this principle with the case in hand, the Court observed that even according to the claim made by the assessee, the expenses have not been wholly and exclusively laid out for the purpose of

the business but at least in part for the maintenance of the health, the comforts and for the benefit of the partner as a human being.

COURTS' SEAL OF APPROVAL ON MODERN AGE CUSTOMS

In **Glaxo Laboratories (India) Ltd. vs. Second ITO (1986) 18 ITD 226**, the issue before special Bench of the Bombay Tribunal was whether the chairman of the company was accompanied by his wife on a tour abroad for business discussion with the assessee company's British associates and it was customary for meetings at social level that the chairman should be accompanied by his wife on such visits, the expenditure incurred on the travel expenses of the wife is an allowable expenditure from the assessee company's business income. The Tribunal held that in the modern age, more so in the western countries, the senior executives as a matter of social custom are accompanied by their wives. Such visits, though are for business purpose, has some social aspects also. In the circumstances, the entire expenditure which included air fare and purchase of some foreign exchange was an allowable expenditure.

On behalf of the revenue, the cases of **T.S. Hajee Moosa & Co. (supra)** and **Bombay Mineral Supply Co. (supra)** were cited. The Tribunal distinguished both the cases on facts and observed that in both these cases, the assesses were unable to prove that the wife accompanied the husband for business consideration.

The same issue cropped up before the Kerala High Court in **CIT vs. Apollo Tyres Ltd (1999) 237 ITR 706**. In this case, the Chairman cum Managing director of the company was accompanied by his wife, and the case of the assessee before the lower authorities was that this was done to enable the husband to discharge his social-cum-business obligations in an effective manner and therefore it is a legitimate deduction allowable under section 37. The High Court approved the order of the Tribunal which had granted relief to the assessee company relying upon the Special Bench judgement in the case of **Glaxo Laboratories (India) Ltd. (supra)** and held that neither the assessing authority nor the appellate authority has got a case that the foreign tour made by the Chairman-cum-Managing Director is not for any business purposes.

In **CIT vs. Aspinwall and Co. Ltd (1999) 235 ITR 106 (Ker.)** the High Court negatived the reliance of the revenue once again upon the judgements in the case of **T.S. Hajee Moosa and Co. (supra)** and **Bombay**

Mineral Supply Co.'s case (supra) holding that in the case under consideration, the assessee had incurred expenses for the travel of its employee and his wife and not the wife of its own partner or director as was the case in the twin cases relied upon by the revenue. The High Court also held that there was no reason to interfere with the order of the Tribunal which had given a factual finding to the effect that traveling was undertaken by the wife of the senior executive only for the purpose of business.

REVERSE MODE- WHERE THE ASSESSEE INVITES ASSOCIATE WITH SPOUSE

In business world, a situation may arise where the assessee has to invite a foreign associate alongwith spouse to create goodwill and cordial relation and also has to foot the traveling bill.

The Madras High Court was in seizin of such a case in **CIT vs. Sundaram Clayton Ltd. 105 Taxman 545**. In this case, the assessee company had invited the Chairman and the Managing Director of its foreign collaborator alongwith their spouses for the purpose of discussing manufacturing and marketing programs, future plans and other activities. The assessee's case was that it was graceful to invite the spouse as well as that would further strengthen the cordial relations between the assessee company and the foreign collaborator and maintain a high level of goodwill between the two companies. The High Court held that having regard to the position that the officials visiting India occupied in the foreign company and the importance of that company in furthering the business interest of the assessee company, the expenditure incurred by the assessee on the spouse of the Chairman and the Managing director is an expenditure which was commercially expedient for the assessee to incur for enhancing the goodwill between the two companies. Such expenditure, therefore, was rightly allowed by the tribunal.

DOUBLE EDGED SWORD-WHETHER EXPENDITURE INCURRED ON ACCOUNT OF SPOUSE CAN BE TAKEN AS INCOME IN HIS/HER CASE

In this regard, provision of sec. 2(24) which provides definition of income is worth taking note of. According to sub clause (iv) thereto, where any benefit is obtained from a company by a relative of a director or of a person

who has a substantial interest in the company, benefit obtained is treated as the income of such relative. Thus, where an assessee company cannot prove the commercial expediency of the accompanying wife on foreign trip, not only will the assessee company face disallowance of the traveling expenses, the sword of sec.2(24)(iv) will also be hanging on the head of the spouse concerned.

The mischievous impact of sec.2(24)(iv) recently came to light in the case of **ACIT vs. Sudha Burman (2002) 83 ITD 327 (Del.)** The case before the Delhi Bench of the Tribunal was that the assessee was the wife of the Chairman of the company. She was taken by her husband on several trips abroad. The A.O. disallowed the expenses attributable to the wife in the hands of the company and also took such item as income of the assessee wife under section 2(24)(iv). The Tribunal held that the assessee failed to discharge the onus that the trips were in relation to the business and therefore, the A.O. had rightly taken such item as income of the assessee wife. Earlier, the Tribunal had observed that the assessee apart from filing a general board resolution passed four years ago, produced no evidence to prove that the wives accompaniment served any business purpose.

CONCLUSION

Courts have recognised modern day business needs and have taken forward-looking approach as far as the issue under discussion is concerned. The Madras High Court in CIT vs. Sundaram Clayton Ltd. (supra) has emphasized the need for updating the interpretation of law with changing times in the following words-

"An assessee cannot claim the expenses, if any, incurred on the travel of a spouse of its director on his/her business travel abroad, unless the spouse contributes to the business of the assessee, as the income of an assessee is not meant to be frittered away for promoting the pleasure of those who manage it, and such expenditure cannot be regarded as commercially expedient. However, in matters of business too, a narrow view cannot be adopted. It is the realities of the commercial world that should determine the kind of expenditure reasonably required to be incurred, and it is necessary to constantly update the interpretation of the Act with a view to accommodate all such expenditure. The language employed in the relevant section is flexible enough to permit such wider interpretation whenever circumstances warrant". ■