

Apr 12,2017

SIGMA CORPORATION INDIA LTD. [TS-145-HC-2017(DEL)]

## Conclusion

Delhi HC reverses ITAT order, deletes disallowance u/s 40A(2) with respect to professional remuneration payment by assessee-company to its Vice President (Marketing) [who is a related party u/s 40A(2)(b)] during AY 2009-10; ITAT had upheld AO's disallowance of 50% of the payments holding it to be unreasonable and excessive on the ground that he could not perform multiple task for more than one concern; Relying on co-ordinate bench rulings in Hive Communication (P) Ltd. and Modi Revlon (P) Ltd., HC holds that *"ITAT in the present case overlooked the materials that were to be taken into account, i.e. reasonableness of the expenditure having regard to the prudent business practice from a fair and reasonable point of view."*; Observes that Revenue in present case did not benchmark VP's expertise with any other consultant and proceeded on the assumption that he could not have performed multiple tasks for more than one concern; Remarks that *"such a stereotyped notion can hardly be justified in today's business world where consultants perform different tasks, not only for one concern but for several business entities."*, cites example of an accountant or a legal professional, who are recipients or retainers of payments from many concerns

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## Decision Summary:

The ruling was delivered by Division bench of Justice S. Ravindra Bhat And Justice Najmi Waziri.

Advocates Mr. Aseem Chawla and Mr. Manu K. Giri argued on behalf of assessee while Revenue was represented by Advocates Mr. Dileep Shivpuri, Mr. Sanjay Kumar and Mr. Vikrant A. Maheshwari.

For AY 2009-10, AO disallowed 50 per cent of the payments made by Sigma Corporation India Ltd. ('assessee') on account of professional remuneration to Vice President (Marketing), Mr. Preetpal Singh (who was a related party). The AO felt that the assessee had not adequately addressed the concerns with respect to the time spent for its work, having regard to the qualifications and expertise of the said expert. On appeal, CIT(A) overturned AO's order as he believed remuneration paid to Mr. Singh was reasonable in consonance to his qualifications.

On further appeal, ITAT affirmed AO's order.

Aggrieved, assessee filed an appeal before Delhi HC.

HC relied on Coordinate Bench ruling in the case of Hive Communication's [\[TS-5411-HC-2011\(DELHI\)-O\]](#) which considered CBDT Circular dated July 6, 1968, which clarified what is meant by "reasonable expenditure" in the context of the AO's discretion u/s 40A. HC also relied

on Kolkata HC ruling in the case of Edward Keventer (Private) Ltd. [\[TS-5-HC-1971\(CAL\)-O\]](#) which was affirmed by SC ruling in this case [\[TS-5013-SC-1978-O\]](#) wherein it was stated that *“the reasonableness or otherwise of the expenditure should take into account firstly the legitimate business needs of the assessee or the company, secondly, benefits derived by or accruing to the company, and that while doing so, the view point of the company or concern having regard to prudent business practices, should prevail”*. Further, HC also relied on Coordinate Bench ruling in the case of Modi Revlon (P) Ltd. which took note of SC ruling in the case of S A Builders Ltd. [\[TS-5025-SC-2006-O\]](#) where it was held that *“ the Revenue ought not to place itself in the arm chair of businessman in dealing with such matters”*.

HC noted that ITAT failed to consider the reasonableness of the expenditure in relation to the prudent business practice from a fair and reasonable point of view. Regarding AO's disbelief on the ability of Mr. Singh's to perform multiple tasks for more than one concern; HC noted that *“such a stereotyped notion can hardly be justified in today's business world where consultants perform different tasks, not only for one concern but for several business entities”*.

Quoting instances of multi-task abilities, HC cited that professionals like an accountant, a legal professional, a journalist or a medical professional are also hired by multiple entities on retainership basis owing to their unmatched experience, learning and expertise, adding that *“unless there is a deeper scrutiny that involves comparable analysis of like situations (a highly difficult task), additions made under Section 40A(2) would be suspect.”*

Thus HC ruled in assessee's favour.

**Case Name:**

Sigma Corporation

Case Law Information

**Level:**

High Court

**Names Of The Judges**

Justice S. Ravindra Bhat-Justice

JUSTICE NAJMI WAZIRI-Justice

**Nature Of The Issues:**

Disallowances

Disallowance u/s 40(a)(i)

**Counsel for Petitioner / Plaintiff:**

Mr. Aseem Chawla and Mr. Manu K. Giri

**Counsel for Respondent / Defendant:**

Mr. Dileep Shivpuri, Mr. Sanjay Kumar and Mr. Vikrant A. Maheshwari

**Date Of The Ruling:**

Feb 15,2017

**Ruling In Favour Of:**

Assessee