

## Finance Act 1968

### Section 7 - Insertion of New Section 40a

---

After section 40 of the Income-tax Act, the following section shall be inserted, namely :-

40A. Expenses or payments not deductible in certain circumstances. - (1) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other provision of this Act relating to the computation of income under the head "Profits and gains of business or profession".

(2)(a) Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this sub-section, and the Income-tax Officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction :

Provided that the provisions of this section shall not apply in the case of an assessee being a company in respect of any expenditure to which sub-clause (i) of clause (c) of section 40 applies.

(b) The persons referred to in clause (a) are the following namely :-

(i) where the assessee is an individual any relative of the assessee;

(ii) where the assessee is a company, firm., association of persons or Hindu undivided family any director of the company, company, firm, partner of the firm, or member association of persons of the association or family, or Hindu undivided family or any relative of such director, partner or member;

(iii) any individual who has a substantial interest in the business or profession of the assessee, or any relative of such individual;

(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

(v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

(vi) any person who carries on a business or profession, -

(A) where the assessee being an individual, or any relative of such assessee, has a substantial interest in the business or profession of that person; or

(B) where the assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person.

Explanation : For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if, -

(a) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent. of the voting power; and

(b) in any other case, such person is at any time during the previous year, beneficially entitled to not less than twenty per cent. of the profits of such business or profession.

(3) Where the assessee incurs any expenditure in respect of which payment is made, after such date (not

being later than the 31st day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction :

Provided that where an allowance has been made in the assessment for any year not being an assessment year commencing prior to the 1st day of April, 1969, in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year the assessee makes any payment in respect thereof in a sum exceeding two thousand five hundred rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, the allowance originally made shall be deemed to have been wrongly made and the Income-tax Officer may recompute the total income of the assessee for the previous year in which such liability was incurred and make the necessary amendment, and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the assessment year next following the previous year in which the payment was so made :

Provided further that no disallowance under this sub-section shall be made where any payment in a sum exceeding two thousand five hundred rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors..

---

---