

Work From Home - A Broad Tax Perspective

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Bijal Ajinkya

Partner, Khaitan & Co.



Raghav Kumar Bajaj

Principal Associate, Khaitan & Co

Income-tax Appellate Tribunal, Mumbai Bench (**ITAT**) has, in the case of *Farah Khan* [\[TS-649-ITAT-2021\(Mum\)\]](#) ruled that the taxpayer is entitled to claim deduction on account of various expenditures in relation to home-office – such as depreciation, interest on funds borrowed to acquire the office-cum-residence, society charges etc. while computing the taxable income (**Ruling**).

Background

For computing taxable business profits under the Income-tax Act, 1961 (**IT Act**), a taxpayer is allowed tax breaks for *inter alia* expenditure incurred for the purpose of the business, depreciation on office premises, interest on funds borrowed for the purpose of business, depreciation in relation to furniture and fixtures. The underlying principle in relation to the allowability of a claim for any expenditure as a deduction is that the expenditure must be incurred for the purpose of taxpayer's business.

Ruling

In the instant case, the taxpayer (celebrity choreographer Farah Khan) owned 6 units in a building (**Premises**). Out of this, 2 units (whose area was approximately 50% of the total area), were specified to be used as office (**Office Portion**) and balance units were used as residence (**Residential Portion**). While filing her income-tax return for financial year 2012-13, with respect to the Office Portion, the taxpayer claimed deduction of interest on loan taken to acquire the Office Portion, depreciation on Office Portion, depreciation on the furniture and fixture, society charges, electricity charges (**Claim**). Taxpayer stated that the area of Office Portion and Residential Portion was clearly demarcated and that having office next door to her residence would provide her comfort of not having to be in public spaces except when necessary.

During the assessment proceedings, the tax officer rejected the Claim by alleging that the taxpayer could neither produce documentary evidence nor provide any justification to substantiate her claim that the Office Portion was being used as her office. At first appeals level (**CIT(A)**), to support her Claim (ie to substantiate that the Office Portion was used as her office), the taxpayer furnished Service Tax Registration certificate, copies of commercial contracts entered into with clients, professional fees / sales invoices raised on third parties etc – all these documents mentioned taxpayer's address as the unit numbers of the Office Portion. She also invited appellate authority's attention to the fact that (i) there

were no other office premises being used by her, (ii) similar Claim was allowed by tax authorities in preceding years also, (iii) the interior of the Office Portion was designed in such a way that these units would be used exclusively for the purpose of business. In view of the above, the CIT(A) ruled in taxpayer's favour and allowed her Claim.

Being aggrieved, the income-tax department filed an appeal with the second level appellate authority, ie ITAT. Taking cognizance of the facts and material placed on record, the ITAT came to the conclusion that the taxpayer has proved that a clearly demarcated part of the Premises was used by her as office with supporting documentary evidence and hence, ruled in favour of the taxpayer.

Position in other jurisdictions with respect to home-office expenses

Interestingly, the concept of home-office deduction is not something which is unique to India only. A summary of some key jurisdictions is set out below:

- [USA\[1\]](#): In USA, self-employed people can deduct expenses incurred for the business use of the home (such as mortgage interest, rent, insurance, utilities, repairs, depreciation, office supplies etc) provided that such portion of the home is 'regularly and exclusively' used as principal place of business. For employees, until the Tax Cuts and Jobs Act of 2017 came into effect, the federal tax code of USA allowed employees to reduce their taxable income by deducting the cost of running home offices and for other unreimbursed employee expenses.
- [UK\[2\]](#): In UK, a self-employed person working from home may be able to claim a proportion of costs for things like heating, electricity, Council Tax, mortgage interest or rent, internet and telephone use. For this purpose, the person will need to find a reasonable method of dividing costs, for example by the number of rooms used for business or the amount of time spent working from home. For employees, tax relief for additional household costs (like gas and electricity, metered water, business phone calls, including dial-up internet access) can be claimed if the employee has to work at home on a regular basis. The employee can claim tax relief on (i) £6 a week from 6 April 2020 (for previous tax years the rate is £4 a week) – employee will not need to keep evidence of extra costs, or (ii) the exact amount of extra costs incurred above the weekly amount – employee will need evidence such as receipts, bills or contracts.
- [Australia\[3\]](#): In Australia, employees working from home may be able to claim a deduction for expenses you incur that relate to their work. To claim such work-from-home expenses, the employee must: (i) be working from home to fulfil employment duties, not just carrying out minimal tasks, such as occasionally checking emails or taking calls, and (ii) incur additional expenses as a result of working from home. There are different methods available to calculate such a claim: (i) Fixed rate method: this method allows the taxpayer to claim 52 cents for each hour worked from home to cover the decline in value of home office furniture and furnishings (for example, a desk), electricity and gas for heating, cooling and lighting, cleaning home office. Expenses like phone, data & internet expenses, computer consumables and stationery, decline in value of depreciating office assets (for example, computers and laptops) can be claimed in addition to the aforesaid 52 cents limit; (ii) Actual cost method: this method allows a taxpayer to claim actual dedicated expenses incurred to produce income when working from home (for example, decline in value of depreciating assets, cleaning expenses, electricity & gas, phone & internet, computer consumables and stationery). For the COVID-19 affected period (i.e., 1 March 2020 to 30 June 2021), a temporary 'Shortcut method' is also available, which allows an employee to claim 80 cents for each hour worked from home to cover all work-from-home expenses.
- [Germany\[4\]](#): In Germany, various properly documented and necessarily incurred income related unreimbursed expenses may be claimed as deduction by an employee – such as business literature, professional dues, work equipment. For the years 2020 and 2021, employees who have switched to remote work are allowed to deduct EUR 5 for each calendar day working from home, whereby the total sum is limited to EUR 600 per calendar year and thus, the limit of days to be claimed is 120.

Comments

With the continued onslaught of the unfortunate COVID-19 pandemic, the concept of '*Work from Home*' has become the new accepted norm wherein taxpayers (especially professionals working in consultancy, creative industry) are using their homes for dual purposes – as residence and as office. This Ruling has adopted a forward-looking approach and given a ray of hope to all such persons to assess any similar tax breaks in their cases too, depending upon factual circumstances and the ability to demonstrate that the 'home portion' and the 'office portion' of the office-cum-residence are demarcated. Interestingly, in the instant case, to support her Claim, the taxpayer even furnished photographs of the office setup and a video recording of the Office Portion and the Residential Portion to prove that a clearly demarcated part is used as office.

At the same time, this Ruling can also be significant from the perspective of foreign enterprises which, in the initial years of their setup in India, hire an external consultant who works from an office-cum-residence. In such cases, it will be interesting to see whether the tax authorities take support of this Ruling to allege the office-cum-residence as the foreign enterprise's 'Permanent Establishment' in India – a concept in tax treaties to bring the foreign enterprise's Indian business profits within the ambit of Indian income-tax charge. This aspect will become more relevant in cases where personnel of such foreign enterprises got stuck in India due to the COVID-19 pandemic.

The views of the author(s) in this article are personal and do not constitute legal / professional advice of Khaitan & Co. For any further queries or follow up please contact us at ergo@khaitanco.com.

[1] <https://www.kiplinger.com/article/taxes/t054-c005-s001-working-from-home-can-you-claim-the-home-office-deduction>

[2] <https://www.gov.uk/expenses-if-youre-self-employed> and <https://www.gov.uk/tax-relief-for-employees/working-at-home>

[3] <https://www.ato.gov.au/individuals/income-and-deductions/deductions-you-can-claim/home-office-expenses/>

[4] <https://taxsummaries.pwc.com/germany/individual/deductions>