

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1589/Mds/2014

निर्धारण वर्ष /Assessment year : 2006-2007

M/s. TTK Healthcare Ltd,
No.6, Cathedral Road,
Chennai 600 086.

Vs. The Deputy Commissioner of
Income Tax,
Company Circle I(4)
Chennai 600 034.

[PAN AABCT 3312J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan, Adv.
प्रत्यर्थी की ओर से /Respondent by : Shri. A.B. Koli, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 03-11-2015
घोषणा की तारीख /Date of Pronouncement : 05-01-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals)-III, Chennai in ITA No.894/2013-14, dated 30.1.2014 for the assessment year 2006-2007 passed u/s.115WE(3) and 250 of Income Tax Act, 1961 (in short the 'Act').

2. The only substantive ground raised by the assessee in appeal with regard to provision made towards Superannuation fund considered for valuation of Fringe benefit Tax by the lower authorities.

3. The Brief facts of the case are that the assessee company is in the business of manufacturing and marketing drugs and medical products, and filed Return of fringe benefits Tax on 24.11.2006 admitting Total value of fringe benefits at ₹3,21,83,444/-. Subsequently, the case was selected for scrutiny and the Assessing Officer completed assessment without considering the submissions on the issue of provision of superannuation fund contribution ₹61,06,866/-. The Assessing Officer treated value of provision for calculation of fringe benefit tax, though such contribution to superannuation fund was paid in the next Financial year in the month of April and May 2006 and there is no dispute about the superannuation fund with the LIC of India. The Assessing Officer also estimated 20% of sales promotion expenses, market research expenditure for calculation of value of fringe benefit. The Id. Authorised Representative submitted that provision is not subject to fringe benefit tax as the same was paid well before due date of filing of return u/s.139(1) of the Act. The Id. Assessing Officer overlooked the legal position, explanations and judicial decision of the Tribunal made an addition and determined the value of fringe benefit at

₹3,83,53,333/- and raised additional demand of ₹20,76,785/-. Aggrieved, by the order the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. The Assessee's Appeal was transferred from the Commissioner of Income Tax (Appeals)-I (erstwhile CIT(A)-III), Chennai as per the Notification of the CCIT, Chennai-I in CHE/Coord/112 (Jursdn.)2012-13 dated 23.04.2013 and 26.04.2013. In the appellate proceedings, the Id. Authorised Representative submitted that superannuation fund is for the welfare of the employees and contribution to fund shall be considered on actual payment but Assessing Officer made an addition, overlooked the payment made in the Financial year 2006-2007 and relied on provision made before 31.03.2006. Further, the Id. Authorised Representative relied on decision of Co-ordinate Bench of the Tribunal in the case of *ACIT vs. M/s. Bharat Overseas Bank Ltd in ITA No.1541/Mds/2010, dated 20.02.2013* where similar issue was dealt. But the Commissioner of Income Tax (Appeals) has called for the remand report of the Assessing Officer and assessee was provided an opportunity to comment on the views of the Assessing Officer. The Id. Commissioner of Income Tax (Appeals) heard the explanations and also legal position but distinguished the decision of the Tribunal and considered the provision as actual contribution and confirmed the order of the lower

authorities. Aggrieved by the order, the assessee assailed an appeal before the Tribunal.

5. Before us, the Id. Authorised Representative relied on the grounds and submitted that the provision of contribution to superannuation fund should not be considered for calculation of valuation of fringe benefit tax and the Id. Commissioner of Income Tax (Appeals) has erred in understanding the explanations of Sec 115WB(1) (c) of the Act were "The fringe benefit means any consideration for employment provided by way of any contribution by the employer to a approved superannuation fund for employees". The assessee company qualify for deduction and relied on the order of *M/s. Bharat Overseas Bank Ltd(supra)* and explained that such contribution was paid in the next Financial year and was subject to fringe benefit tax. Further, when the tax is paid by the employee on such benefit the provisions of fringe benefit tax are not applicable and prayed for deletion of addition.

6. On the other hand, the Id. Departmental Representative relied on the orders of the lower authorities and vehemently argued for dismissal of the appeal.

7. We heard the rival submissions of both the parties, perused the materials on record and orders of the lower authorities and judicial

citation referred by the Id. Authorised Representative. The assessee company has made a provision for contribution to superannuation fund and the same was paid in the next Financial year. There is no dispute about the provision and the payment and there is no escapement of value and same was subject to fringe benefit tax. Similar issue was considered by the Co-ordinate Bench in the case of *M/s. Bharat Overseas Bank (supra)* wherein held that provision of contribution to the approved superannuation fund was not subject to charging of FBT. Accordingly, we direct the Assessing Officer to delete the addition.

8. In the result, the appeal of the assessee in ITA No.1589/Mds/2014 is allowed.

Order pronounced on Tuesday, the 5th day of January, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:05.01.2016

KV

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |