

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1411/Bang/2013
(Assessment year: 2009-10)**

Joint Commissioner of Income-tax (LTU),
Bangalore.

Vs.

... Appellant

M/s.Texas Instruments,
Bagmane Tech Park, No.66/3 Adjacent to
LRDE, Byrasandra, C V Raman Nagar Post
Bangalore-560093.
PAN: AAAC75445M

... Respondent

AND

**ITA No.1448/Bang/2013
(Assessment year: 2009-10)**

M/s.Texas Instruments,
Bangalore.

Vs.

... Appellant

Addl. Commissioner of Income-tax(LTU)
Bangalore.

... Respondent

Assessee by: Shri Sharath Rao, CA.
Revenue by: Dr. P.K.Srihari, Addl.CIT (DR)

Date of hearing : 24/06/2015
Date of pronouncement: 30/07/2015

O R D E R

Per Smt. P. MADHAVI DEVI, JM:

These cross appeals are filed both by the Revenue as well as the assessee against the order of the CIT(A), LTU, Bangalore, dated 19/07/2013 for the assessment year 2009-10.

2. Brief facts of the case are that the assessee-company, which is engaged in the business of design, manufacture and export of computer software, filed its return of fringe benefits u/s 115WE of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] by declaring Rs.11,00,41,042/- as the value of fringe benefits provided by it to its employees during the relevant previous year. During scrutiny proceedings u/s 115WE of the Act, a detailed questionnaire was sent to the assessee to produce documentary evidence in support of the expenses claimed as exempt from FBT. In response, the assessee submitted details vide letters dated 14/11/2011 and 25/11/2011. On perusal of the same, AO observed that the assessee has claimed the following expenses as exempt from FBT:

- I. Travelling and conveyance expenses of Rs.1,15,36,641/-,
- II. Donations of Rs.1,05,37,994/-,
- III. Recruitment expenses of Rs.49,28,531/-, and
- IV. In-house training expenses of Rs.2,04,14,531/-

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I. On perusal of the travelling and conveyance expenses, the AO observed that the expenses are in the nature of conveyance expenses. He, therefore, treated 20% of the same as fringe benefits and added the same to the value of the fringe benefits declared by the assessee in the return and made an addition of Rs.23,07,328/- on this account.

II. With regard to the claim of donations, the AO observed that the assessee, in its reconciliation statement under the head 'Personnel, administrative and other expenses' has reflected the sum of Rs.1,05,37,994/- as donations and claimed them to be exempt from FBT. From the documentary evidence filed by the assessee, the AO observed that the assessee has wrongly attempted to term the expenses incurred on sponsorships and scholarships under the narration 'donation' in its submissions dated 20/10/2011. He, therefore, treated 50% of the same as fringe benefit and added a sum of Rs.52,68,997/- to the value of fringe benefits declared in the return.

III. With regard to the claim of recruitment expenses, the AO observed that the expenses are in the nature of travel reimbursements to assessee's employees which are chargeable fringe benefits under the Act. He, therefore, brought 20% of the same to tax as fringe benefits by adding a sum of Rs.9,85,706/-.

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IV. With regard to the claim of in-house training expenses, the AO asked the assessee to produce bills/vouchers in support of the expenses incurred. After perusal of the details filed by the assessee, the AO came to the conclusion that they are expenses in the nature of onsite management and event management, designing charges, pace profession fee, sponsorship charge (gold sponsor), Bronze sponsorship, Associate sponsorship for Quiz at Infocom 2008-09, Calcutta and Sponsorship International Conference on Medical Electronics, etc. Therefore, he was of the opinion that the assessee has wrongly attempted to term the expenses incurred on 'Entertainment and Conference' under the narration 'In-house training' since, according to him, the expenses were in the nature of 'entertainment and conference' liable to FBT as per clauses (A) and (C) of sec.115WB(2) of the Act. He considered 20% of the claim i.e. Rs.40,82,906/- as the value of fringe benefit liable to tax.

Accordingly, he added a total sum of Rs.1,26,44,937/- to the returned fringe benefits and brought it to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) who granted partial relief to the assessee. Against the relief granted by the CIT(A), the Revenue is in appeal before us while against the partial confirmation of the disallowances by the CIT(A), the assessee is in appeal before us.

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4. In ITA No.1411/Bang/2013, the Revenue has raised the following grounds of appeal:

- “1. The order of Ld CIT(A) is opposed to law and facts of the case.
2. The Ld CIT(A) erred in giving relief to assessee by treating transportation charges as separate from conveyance expenses based on fresh evidences filed before appellate commissioner.
3. The Ld CIT(A) erred in giving relief to assessee by treating donation/sponsorship charges as not chargeable to FBT based on fresh evidences filed before appellate commissioner.
4. The Ld CIT(A) ought not to have admitted the fresh evidences by invoking Rule 46A on account of ground numbers 2 & 3 referred above, without giving opportunity of being heard to the AO.
5. The Ld CIT(A) erred in giving relief to assessee by treating half of the recruitment expenses as genuine, even though they were not recruitment expenses as per her own observation.
6. For these and such other grounds that may be urged at the time of hearing.

5. Ground Nos.1 and 6 are general in nature and need no adjudication. As regards ground No.4 and all the other grounds, the common grievance of the Revenue is that the CIT(A) has admitted fresh evidence filed by the assessee in violation of rule 46A of the Income-tax Rules [‘the Rules’ for short] and has given relief on the basis of such additional evidence..

5.1 The learned Departmental Representative has drawn our attention to the order of the CIT(A) wherein, on the basis of the

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evidence filed by the assessee before the CIT(A), relief has been granted to the assessee on all counts. He submitted that as per Rule 46A of the Rules, the CIT(A) ought to have called for a remand report from the AO on the evidence filed by the assessee before giving relief to the assessee. Therefore, according to him, the order of the CIT(A) has to be set aside on this ground alone.

5.2 The learned counsel for the assessee, on the other hand, submitted that all the evidence filed by the assessee before the AO only has been filed before the CIT(A) and that it was only on the direction of the CIT(A) that the assessee had filed additional evidence in the form of bills, vouchers and invoices which have been considered by the CIT(A) and only after verification of the same, relief has been granted to the assessee. He submitted that the additional evidence was produced before the CIT(A) on the directions of the CIT(A) and in such circumstances, rule 46A is not applicable. In support of this contention, the learned counsel for the assessee placed reliance upon the following decisions:

- i. *DCIT vs. MKU (Armours) Pvt. Ltd.*, reported in (2014) 41 CCH 0365 Lucknow Trib, and
- ii. *United Cores (P) Ltd. vs. ACIT* (1998) 62 TTJ 083, Del. Trib

5.3 This being the basic objection of the learned Departmental Representative, we deem it fit and proper to dispose of this

objection of the Revenue first. For the sake of ready reference, rule 46A is reproduced hereunder:

"Production of additional evidence before the Deputy Commissioner (Appeals) and Commissioner (Appeals)

46A. (1) The appellant shall not be entitled to produce before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, except in the following circumstances, namely :—

- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or
- (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or
- (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) records in writing the reasons for its admission.

(3) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity—

- (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
- (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

(4) Nothing contained in this rule shall affect the power of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) to direct the production of any

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document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.

From a literal reading of the above rule, it is clear that sub-rule (4) of rule 46A empowers the CIT(A) to direct production of any document or examination of any witness to enable him to dispose of the appeal or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or at the request of the AO) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271. Section 251 of the Act deals with the powers of the CIT(A) in disposing of the appeals filed before him/her. Thus, it is clear, that where the CIT(A) had called for details on such direction and the assessee files such details on such direction, it is not incumbent upon the CIT(A) to call for a remand report from the AO. It is only when the assessee files additional evidence before the CIT(A) that the CIT(A) is bound to apply the provisions of rule 46A. This issue was considered by the Lucknow bench of the Tribunal in the case of *MKU (Armours) Pvt. Ltd.*, (cited supra) wherein it was held that where various documents/affidavits and statements on oath were made by the assessee in pursuance of the specific directions given by CIT(A) u/s 250(4), it cannot be said that the documents were admitted

in violation of rule 46A. The relevant portion of the order is reproduced hereunder:

"5. We have considered the rival submissions. We find that as noted by CIT(A) in Para 5.6, the Learned A.R. of the assessee has filed an affidavit dated 11/06/2010, sworn by Mr. Manish Khandelwal, Director of the assessee company. The CIT(A) has reproduced the relevant portion of this affidavit in his order. Thereafter, the CIT(A) has decided the issue as per Para 6 of his order. We also find that CIT(A) has examined the authenticity of the said affidavit and for this purpose, he has also examined the affidavit of technical staff. In Para 6.2.7 of his order, it is noted by CIT(A) that in compliance to his direction, Shri Manish Khandelwal attended with Shri G. C. Mishra, the technical staff and their statements were recorded on oath. The CIT(A) has also reproduced the relevant portion of their statements. Thereafter, the CIT(A) has decided the issue on the basis of these affidavits and statements. In our considered opinion, the statements were recorded of Shri Manish Khandelwal along with Shri G. C. Mishra on the direction of CIT(A) and therefore, the said statements are covered by section 250(4) and for these statements, there is no applicability of Rule 46A. Regarding the affidavit of Shri Manish Khandelwal, Director of the assessee also, we are of the considered opinion that affidavit of the Director of the assessee company cannot be considered as a new evidence effected by Rule 46A. On page No. 25 of his order, it is noted by CIT(A) that various documents were submitted by the assessee in pursuance of his specific directions given u/s 250(4) of the Act. Considering all these facts, in our considered opinion, there is no violation of Rule 46A and therefore, we do not find any merit in ground No. 2 raised by the Revenue. Accordingly, this ground is rejected."

5.4 Further, Delhi Bench of the Tribunal in the case of *United Cores (P) Ltd.* (cited supra) in para.5.7 of its order also held as under:

"5.7 The aforesaid facts and evidence existing on record prove that Mithan Lal had duly confirmed the fact of advancing the entire amount of loan to the assessee. Mithan Lal had also explained the sources, inter alia, the source of loan of Rs. 2 lakhs taken from N.C. Jain, HUF. Thus Mithan Lal had also proved the source of source. The assessee also

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further proved the source wherefrom N.C. Jain, HUF gave loan to Mithan Lal by producing the details relating to funds and income of Neeraj Jain and Anoop Jain. We are, therefore, of the considered opinion that the CIT(A) after carefully considering all the entire relevant facts and material has rightly deleted the addition of Rs. 2 lakhs in respect of amount given by Mithan Lal. Further supporting evidence was submitted on behalf of the assessee before the CIT(A) pursuant to the requirement made by the CIT(A). This does not fall within the purview of r. 46A of IT Rules. The provisions of r. 46A can be invoked only when the assessee suo motu wants to produce further material before the CIT(A) and would not apply in a case where further material is produced at the instances of the CIT(A). Even if the supporting material submitted before the CIT(A) is ignored, the documents already submitted before the AO clearly prove that the assessee has proved the identity and capacity of Mithan Lal. The assessee has also proved that Mithan Lal is an existing income-tax assessee and his creditworthiness stands proved by various documents submitted before the AO. We, therefore, do not find any justification in interfering with the view taken by the CIT(A) in relation to the deletion of the said addition of Rs. 2 lakhs."

Thus, this issue is squarely covered by the orders of the co-ordinate bench of this Tribunal.

5.5 However, to apply the above decisions to the case before us, we felt it necessary to verify whether the assessee had suo-motu filed the evidence or filed the same at the directions of the CIT(A). Therefore, the record of the CIT(A) was called for. The learned Departmental Representative produced the same before us on 24/06/2015 and on perusal of the same, we found that the additional evidence was filed at the direction of the CIT(A). Therefore, we are satisfied that there is no violation of Rule 46A of the Rules. In view of the same, we reject ground No.4 and also the objections of the revenue on this ground.

6. Coming to the merits of the various additions made by the AO and the order of the CIT(A) granting partial relief to the assessee, we deal with each of the issues as under.

I. Travel and conveyance charges: The assessee had claimed transportation expenses as exempt from FBT. The AO did not accept the assessee's contention and held it to be 'conveyance expenses' liable for FBT and accordingly 20% of the same was disallowed. We find that before the CIT(A), the assessee had filed copies of the agreement entered into by the assessee with M/s.Bagmane Realtors Pvt. Ltd., and M/s.K.S.E.Transport and the CIT(A), after being satisfied that the contracts specifically refer to transportation of employees from designated pick up points to the office premises in the morning and drop back to these locations in the evening, has allowed the claim of the assessee. The learned counsel for the assessee had placed reliance upon the decision of the Pune bench of the Tribunal in the case of Tetra Pak India (P) Ltd., in ITA No.1961 to 1966/PN/2012 wherein at para.5 of the decision it has been held that expenditure incurred for transporting employees to the factory and back is not liable to FBT since the expenditure has not vested any personal benefit to the employees and also since the same has been incurred during the course of assessee's business. In the case before us, we find that the agreements with the transport contractors are also filed at pages 110 to 122 and 149

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to 176 of the paper book filed before us and on perusal of the same, we are satisfied that the finding of the CIT(A) is after verification of facts as claimed by the assessee that the transportation of employees to and from office and residence did not confer any personal benefit to the employees and that it was for effectively carrying on of the business of the assessee. The above decision of Pune Bench is applicable to the facts of the case before us. Therefore, we do not see any reason to interfere with the order of the CIT(A). Ground of appeal No.2 is accordingly rejected.

II. Sponsorships and scholarships termed as donations:

We find that the AO has disallowed the same holding them to be liable for FBT. But before the CIT(A), the assessee had filed the ledger account pertaining to the expenses and it was observed that the expenses were towards (i) corporate social responsibility (ii) conducting general technology related quizzes and (iii) sponsorships to educational institutions. We find that the CIT(A), after examining the ledger details and the sample invoices concluded that the contributions were charitable and incurred by the assessee as pure business related expenses with no benefit conceived for employees either individually or collectively. The learned counsel for the assessee has placed reliance upon the decision of the Hon'ble Karnataka High Court in the case of *CIT vs. Karnataka Thermal Power Corporation Ltd.*

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(ITA No.368/2011) wherein it has been held that unless fringe benefits are extended to employees and the same are enjoyed by them, there is no question of levying FBT on the employer.

The learned Departmental Representative, has not been able to produce any evidence to the contrary to rebut the above finding of the CIT(A). It is the settled issue by the jurisdictional High Court in the case of *CIT vs. Karnataka Thermal Power Corporation Ltd.* (cited supra) that unless and until there is employer-employee relationship between the payer and the payee, it is not taxable as a fringe benefit. Since the scholarships and sponsorships are given to third parties and not to the employees of the assessee-company and no benefits are enjoyed by the employees of the assessee either individually or collectively, we do not see any reason to interfere with the order of the CIT(A). Therefore, the ground of appeal No.3 is also rejected.

III. Recruitment expenses: We find that the assessee had claimed the recruitment expenses under the head 'personnel, administrative and other expenses' and claimed the same to be exempt from FBT. While the AO had treated 20% of the same to be liable for FBT, the CIT(A), after examining ledger details and the sample invoices, concluded that 50% of the same pertain to actual recruitment related expenses incurred for prospective employees for their travel, hotel stay and medical check-up and

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that the balance was incurred on existing employees in connection with the relocation costs of the current employees and their temporary accommodation charges due to relocation. Therefore the CIT(A) has granted relief regarding actual recruitment related expenses and held that 50% of the balance expenses incurred towards employees of the assessee should be treated as FBT. Both the assessee as well as the revenue are in appeal before us.

(i) In connection with this ground, the learned counsel for the assessee submitted that all the details pertaining to the recruitment expenses were submitted to the AO as well as the CIT(A) and as per the directions of the CIT(A), certain additional evidence relating to the same was also submitted. It is submitted that the expenses incurred by the assessee are not for the existing employees of the assessee but are for recruiting the employees and therefore the same cannot be deemed to be Fringe benefit liable to FBT. As regards the expenses incurred towards existing employees, he submitted that accommodation provided to such employees was for relocation and that it was a perquisite in the hands of the employees u/s 17 of the Act and further that the accommodation in no case has exceeded 15 days and therefore the value of such perquisite was 'nil' in the hands of the employees by virtue of section 17(2)(d) of the Act, it would

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not fall within the purview of FBT. In support of this contention, he placed reliance upon the following decisions:

- i. Toyota Kirloskar Motors Pvt. Ltd. (ITA Nos.20 & 88/Bang/2011),
- ii. Wipro Ltd. (ITA No.1224 to 1226/Bang/2013),
- iii. Rasna Pvt. Ltd. (ITA No.817/Ahd/2013) and
- iv. Vijaya Bank (ITA No.1066/Bang/2010).

The learned counsel for the assessee has also further placed reliance upon the Explanation to rule 2BB of the IT Rules wherein it is provided that for the purpose of clause (a) i.e. any allowance granted to meet the cost of travel on transfer includes any sum paid in connection with transfer, packing and transportation of personal effects on such transfer.

(ii) On careful consideration of rival contentions as well as material on record, we find that the assessee's claim of 'personnel, administrative and other expenses' as recruitment expenses exempt from FBT include (i) travel related expenses in respect of candidates who appear for interview from outstation and also costs relating to medical check-up of such candidates; and (ii) expenditure incurred for existing employees of the company for air and sea shipment and also for their accommodation charges on their transfer from US to India. The CIT(A) has found that the expenditure incurred for candidates who appear for interview cannot be held as expenses for the employees of the assessee-company since it was found that only some of the candidates were found to have been recruited and

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further that the expenditure incurred on prospective employees of the assessee-company is not liable for FBT and therefore needs to be excluded. Against this finding of the CIT(A), the revenue is in appeal before us.

(iii) Though the learned Departmental Representative placed reliance upon the order of the AO, we find that the AO has summarily treated the entire amount as expenses incurred by the assessee on its employees without actually examining the details of the expenditure claimed by the assessee. We find that the CIT(A) has verified the documents filed before him and after examining the nature of the expenditure, has come to the conclusion that part of the expenditure incurred was on prospective employees towards their travel and accommodation and medical check-up and therefore held that it is not liable for FBT as there is no employer-employee relationship between the assessee and such persons. The learned Departmental Representative, has not been able to file any evidence to the contrary to rebut this finding of the CIT(A). In view of the same, we do not see any reason to interfere with the order of the CIT(A) on this issue and the revenue's ground is dismissed.

(iv) As regards the partial confirmation of the 'recruitment expenses' by the CIT(A) with regard to the expenditure incurred by the assessee towards its existing employees, the assessee is in appeal before us. We find that the CIT(A) has considered the

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claim of the assessee in detail and at para 5.7 and 5.8 of his order, has brought out the details of the expenditure towards travel and accommodation of existing employees and held that the expenditure incurred on the existing employees is liable to FBT. Therefore, he treated 50% of the recruitment expenses as incurred towards the employees of the assessee and brought it to tax.

(v) The learned counsel for the assessee while reiterating the submissions made by the assessee before the authorities below, submitted that the expenses on existing employees of the assessee was in connection with the relocation costs and accommodation charges due to such relocation. He submitted that under Rule 2BB of the IT Rules, the allowance given to meet the cost of travel on tour or transfer is exempt from taxation as prescribed u/s 10(14) of the Act. Further, according to him, the temporary accommodation of less than 15 days is also a perquisite whose value was 'nil' and therefore not exigible to FBT. The learned Departmental Representative, on the other hand, supported the orders of the authorities below.

(vi) Having regard to the rival contentions and the material on record, we find that the CIT(A), after verification of the details filed by the assessee has given his finding as follows:

"5.4 However, examination of the ledger details also reveals many items of substantial expenditure which were clearly incurred for

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existing employees of the company. For example- Rs. 5,14,000 on 29.04.2008 for air & sea shipment of Sanjay Singh, Rs. 1,41,055 on 29.04.2008 for sea shipment of Mukund Navada, Rs, 27,318 on 01.08.2008 for accommodation charges of Karthik Majeti and Rs. 27,750 on the same date for accommodation charges of Gaurav Mittal all admittedly pertain to existing employees of the company. The AO tried to explain away these expenses by stating that the air & shipment charges are in the nature of "employee relocation" expenses which are not liable for FBT since they are in the nature of allowances referred to in Sec.10(14)(ii) and specified in Rule 2 BB(2). It was also submitted that relocation expenses are covered within the definition of salary as "allowance" under section 17(1) of the IT Act read with Rule 2BB of IT Rules. However, it was claimed that such allowances are not taxable in the hands of employee by virtue of Sec.10 (14)(i).

5.5 This claim of the appellant is difficult to admit since the very nature of allowances described in Sec.10 (14)(ii) relate to "any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living." The allowances referred to in Rule 2BB(2) are "special compensatory allowances" in the nature of border area allowance, remote locality allowance or difficult area allowance or disturbed area allowance. The employees in question on whom the expenditure had been incurred were based in US and had relocated to India. Rule 2BB (2) is clearly not applicable to these destinations. Hence, the appellant's explanations appear to be attempts to confuse the issue by referring to non relevant and patently inapplicable legal provisions.

5.6 There are large amounts debited under this head as "reclassification" which are vaguely worded and could not be substantiated before me. For instance Rs. 9,16,639 on 31.07.2008 as "differential amount for consultant", Rs. 2,38,934 on same date for "professional fee" which are not related, prima facie, to new hires as recruitment expenses.

5.7 Even with regard to the "accommodation charges" an examination of some of the sample instances taken from the ledger shows the lack of clarity in the appellant's claims and the attempt to muddle the issue. There are many instances of undisputed expenditure for existing employees booked as recruitment expenses - For instance Rs. 23,800 on 24.12.2008 shown as "Single Occupancy", Rs. 46,500 on 17.03.2009 as accommodation for Vibhore Vardhar etc. In another significant instance it is seen that on 29.08.2008 Rs. 15,500 per head was booked for 50 persons with the ledger description "new hire hotel accommodation". The AR filed evidence purported to be sample invoice in case of Abhijit Pagare

and Abhishek Chhaji out of this list. It was claimed that the accommodation in Dolphin Inn had been provided for only 15 days. The AR stated that since the accommodation provided to the employees in these places have not exceeded 15 days in the respective hotels, the payment would constitute 'nil' perquisite u/s.17(2)(d). It was, therefore, argued that since the expenses are covered within the definition of perquisite and subjected to tax in hands of employees upon the period of stay exceeding 15 days, the same should not be covered within the definition of fringe benefits u/s, 115WB(2).

5.8 The appellant's claim as above, however, is not borne out from facts since even in the sample invoices submitted, it is found that in the bill NO.0155 - A and 0155 - B dt. 21.07.2008 from Dolphin Inn, the arrival date for the guests is mentioned as 01.07.2008 and departure date as 20.07.2008, clearly showing a stay of 21 days in the hotel. There is no mention of the guest's name in the bill nor does it carry guest's signature in the designated place. The only description in the two bills is "Charges for 15 days for 50 pax" (Rs, 7,50,000) and " Laundry charges for 15 days for 50 pax" (Rs, 25,000). The reason for bills being raised for 15 days as against much longer actual stays, therefore, is quite Inexplicable and either the practice contains an inherent dishonesty or the existence of supplementary bills for this period of service cannot be ruled out. The two bills are shown below:

DOLPHIN INN

J. P. Corporation, District
Autonomous Council
Kangra (Distt) - 176008
Tel: 0191-2555000
Fax: 0191-2555004

TEXAS INSTRUMENTS INDIA PVT. LTD. GNDL, Durgam Chawl, 3rd Cross, Phase C V, Banner, Bangalore, India Bangalore-560075	REG. NO. REG. NO. TAXPAYER NAT. QUALITY ADULT CHILDREN	REG. NO. REG. NO. 50	REG. NO. REG. NO. 50	REG. NO. REG. NO. 50	REG. NO. REG. NO. 50
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DATE	REF	PARTICULARS	DEBIT	CREDIT	AMOUNT
21/07/08		Charges for 15 days for 50 pax inclusive of Breakfast (per person per day) TOTAL (Rupees Seven Lakh Fifty Thousand only) Total INR 75,00,000			7500000.00

Payment Mode: Cash/Cash/Cheque/Credit
 Banked by: Mr. H. S. ...
 Recipient: ...
 All per Cheque/DD No. to be drawn in favor of DOLPHIN INN, Autonomous Council, Kangra, Distt. J.P. Corporation, J.P. ...
 B-BANK: ...
 DUES TO: ...
 PAID

DATE		REF	PARTICULARS	DEBIT	CREDIT	AMOUNT
21/07/08			Laundry Charges for 15 days for 50 per			25000.00
			TOTAL			25000.00
			(Rupees Twenty Five Thousand only)			
			Your PO No. 4511725420			

Payment Mode: Card/Cash/Cheque/Company
Booked by: Ms. Kishore
Receptionist: Mona

At per Cheque/DD to be drawn in favor of DOLPHIN INN payable at Bangalore.

E-MAIL: bookings_dolphininn@usa24x7.com

The AR was unable to reconcile the above factual discrepancy and it was admitted that the hotel services have not been incurred for "new hire" as the ledger description incorrectly indicates. A third sample invoice produced in case of Achhintya Kundu (Rs, 15,000 on 29.08.2008 towards "accommodation charges - new hires"), although correctly reflecting a 15 day stay, is not for a new hires/ applicant of the company as shown.

5.9 From the descriptions in the ledger and the sample evidences produced before me, therefore, the most generous conclusion that I can derive is that the expenses booked under "Recruitment" include items both for prospective employees as well as for existing employees. The appellant was unable to furnish a complete break-up of the expenditure for these two categories. Since a very large component of the expenditure as described above has been incurred on existing employees, it is reasonable to hold that only 50 of the amount debited under this head pertains to actual recruitment related expenses incurred for prospective employees for their travel, hotel stay and medical check-up. The balance is considered to have been incurred on existing employees. The arguments relating to relocation expenses as discussed above are not accepted. Similarly, the arguments relating to hotel stay being perquisite are also not accepted for the reasons discussed earlier. Therefore, the AO is directed to restrict the computation of FBT only to Rs.24,64,265 being 50% of the amount debited as recruitment expenses. The rate to be adopted should be 5% as per sec 115 WC(2)(d)."

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We find that sub-section (1) of sec.115WB defines the term 'fringe benefit' and sub-section (2) explains the expenses which can be deemed as fringe benefit, while sub-section (3) provides for exceptions to fringe benefits. Sub-sec.(3) of sec.115-WB provides that a privilege, service, facility or amenity will not be a fringe benefit if it is a perquisite in respect of which tax is paid or payable by the employee or any benefit or amenity in the nature of free or subsidized transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence. Therefore, it is clear that any perquisite in the hands of the employee will not be amenable to FBT. Sub-section (2) of sec.17 defines 'perquisite' and clause (viii) thereof includes the value of any other fringe benefit or amenity as may be prescribed as a perquisite. Rule 3 of the IT Rules prescribed the table wherein the value of the residential accommodation provided by the employer during the previous year is to be determined. In the said table, item (3) speaks about the accommodation provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another). Thus it is clear that where hotel accommodation is provided to an employee for less than 15 days on his transfer from one place to another on account of relocation, the same is exempt from being

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treated as a perquisite. Further rule 2BB which prescribes allowance for the purpose of clause (14) of section 10 also provides that any allowance granted to meet the cost of travel on tour or on transfer is exempt from taxation. From the order of the CIT(A), it is seen that the expenditure on existing employees of the assessee are as under:

- i. Rs.5,14,000/- on 29/04/2008 for air and sea shipment of Sanjay Singh.
- ii. Rs.1,41,055/- on 29/04/2008 for sea shipment of Mukund Navada,
- iii. Rs.27,318/- on 01/08/2008 for accommodation charges of Karthik Majeti and
- iv. Rs.27,750/- on 01/08/2008 for accommodation charges of Gaurav Mittal.

The CIT(A) has also observed in paragraphs 5.7 and 5.8 of his order that the hotel bills do not specify the names of the guests staying in the hotel and further that one of the bills shows stay of 21 days in a hotel. Thus, the CIT(A) has brought out certain discrepancies in the claim of the assessee as relocation charges. As the entire details are not before us, we deem it fit and proper to remit this issue to the file of the AO with a direction to verify the nature of the bills claimed by the assessee on account of relocation of its employees on transfer and only such expenses which are incurred on transfer and which satisfy the definition of 'perquisite' in the hands of the employees has to be treated as not amenable to FBT. We make it clear that even if it is a

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perquisite and is not taxed in the hands of the employees on account of its value being 'nil', it will not be amenable to FBT. Thus, the assessee's ground of appeal No.2 is treated as allowed for statistical purposes.

In the result, the revenue's appeal is partly allowed for statistical purposes.

ITA No.1448/Bang/2013:

7. In this appeal, the assessee has raised the following grounds of appeal:

Based on the facts and circumstances of the case, Texas Instruments (India) Pvt. Ltd. (hereinafter referred as 'the appellant' respectfully submits in respect of the order passed by the learned Commissioner of Income-tax(Appeals) (hereinafter referred as 'CIT(A)' - Large Tax payer unit, Bangalore, under section 250 of the Income-tax Act, 1961 (hereinafter referred to as the 'Act' that :

1. The order passed by the learned CIT(A) under section 250 of the Act read with the order passed by the learned Additional Commissioner of Income-tax (hereinafter referred to 'AO' or 'Ad CIT' under section 115WE(3) of the Act is not in accordance with the law and is contrary to the facts and circumstances of the present case, in respect of the following grounds.
2. **Recruitment expenses**
 - 2.1 The learned CIT(A) has erred in law and on facts in considering 'recruitment expenses' as expenditure in the nature of travel/hotel expenses and holding the same as being liable to Fringe Benefit Tax (FBT)
 - 2.2 The learned CIT(A) has erred in law and on facts in holding that 50 percent of recruitment expense (i.e. 50 per cent of Rs.4,928,531) should be considered as recruitment expense and the balance 50 per cent as being incurred

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towards travel/hotel expenses being liable to FBT.

3. **In-house training expenses**

- 3.1 The learned CIT(A) has erred in law and on facts in holding 'in-house training expense' to be in the nature of employee benefits/welfare liable to FBT;
- 3.2 The learned CIT(A) has erred in law and on facts in stating that 'in-house training expense' of Rs.20,414,531 incurred by the Appellant are not in the nature of in-house training expenses and observing that training conducted by external resources could not be considered as 'in-house training expense'
- 3.3 The learned CIT(A) has erred in law and on facts in holding that travel cost and expenses incidental to training were also liable to FBT, without appreciating the fact that there was no employee benefit involved with respect to such expenses.

7.1 Ground No.1 is general in nature and needs no adjudication.

7.2 Ground No.2 is against partial disallowance of recruitment expenses. We have dealt with this issue extensively in the revenue's appeal para 6 above. Therefore, respectfully following the same, we treat this ground of appeal as allowed for statistical purposes.

7.3 As regards grounds of appeal No.3, brief facts are that the assessee had claimed a sum of Rs.2,04,14,531/- as **in-house training expenses** and claimed it to be exempt from FBT. AO called for various details. On perusal of the details filed by the assessee, AO observed that the expenses incurred are in the

nature of onsite management and event management, designing charges, pace profession fee, sponsorship charge (gold sponsor), bronze sponsorship, associate sponsorship at Info com 2008-09 and sponsorship international conference on Medical Electronics etc. AO came to the conclusion that the assessee has wrongly attempted to term the expenses incurred on 'entertainment and conference expenses' under the narration 'in-house training'. He, therefore, disallowed the same and brought it to tax as FBT.

7.3.1 Aggrieved, assessee preferred an appeal before the CIT(A) stating that the expenses are incurred towards fees for participation/registration by the employees of the assessee in conferences and sponsorship provided to educational institutions and other business expenses related to training expenses. The CIT(A) verified the details of the expenditure claimed by the assessee and observed that the expenditure includes a very large component which is described as "un-billable" (totaling to Rs.9,11,513/-) over various dates clearly implying that the amounts were not to be charged for claim of expenses related to business and that the assessee has not furnished any explanation for the same. Further, he also considered certain bills and invoices and came to the conclusion that the expenses are mainly in the nature of conference, counseling, professional training fees, all of which are intrinsically linked to employees and their welfare. He observed that the assessee could not establish that the

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seminars and conferences which have been shown as held in multiple locations did not include the employees as participants and also that in-house training includes the expenses to outside individual and professional agencies who have conducted training for employees of the company on outsourced basis. He, therefore, came to the conclusion that in-house training expenses were amenable to FBT. He, therefore, confirmed the addition made by the AO and the assessee is in second appeal before us.

7.3.2 The learned counsel for the assessee, while reiterating the submissions made before the authorities below, placed reliance upon the answer to question No.13 of circular No.8 of 2005 to substantiate that payments to third parties are outside the purview of FBT. He placed reliance upon the decision of this Tribunal in the case of M/s. IBM India Pvt. Ltd., for assessment year 2008-09 in ITA No.392/Bang/2012 wherein it has been held that payments to third party faculty for 'in-house training' is not liable to FBT. It was also held that training done outside the assessee's premises also was not liable to FBT. Copies of the above orders are also filed before us.

7.3.3 The learned Departmental Representative, however, supported the orders of the authorities below.

7.3.4 Having regard to the rival contentions and the material on record, we find that the CIT(A) had perused all the

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details and has found that a sum of Rs.9,11,513/- is prescribed as un-billable and the assessee has not been able to explain that this expenditure is related to the assessee's business. Even before us, assessee has not been able to explain the nature of these expenses. Therefore, we confirm the order of the CIT(A) as far as this addition is concerned. However, as regards other expenses, the CIT(A) has concluded that these are towards training of the assessee's employees. The CIT(A) has observed that training is conducted outside the premises of the assessee on an outsourced basis and that payments have been made to third parties for training of the assessee's employees. As regard this finding of the CIT(A), we find that the CBDT had issued Circular No.8 of 2005 wherein question No.51 is:

'whether expenditure incurred during in-house employee training would be considered as conference expense and liable to FBT?'

The answer given is that FBT is not envisaged for levy on the expenditure incurred for the purposes of imparting in-house training to employees. However, FBT would be payable on any expenditure incurred towards food and beverage, tour and travel and lodging and boarding in connection with such in-house training of employees.

7.3.5 In the case before us, there is no allegation that in-house training includes expenditure incurred on food and

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beverage, tour and travel in connection with such in-house training of the employees. The CIT(A) has held that these expenses are towards third party professionals involved in the training of the employees. We find that the Tribunal had an occasion to examine this issue in the case of *Toyota Kirloskar Motor Pvt. Ltd.* (ITA Nos.20 & 88/Bang/2011 dated 11/05/2011), to which both of us are signatories, wherein it has been held that the expenses paid to third parties and not to the employees is not liable for FBT. Further, in the case of *IBM India Pvt. Ltd.*, in ITA No.1449/Bang/2013 dated 10/4/2015 wherein the liability of FBT on in-house training was considered and placing reliance upon the Tribunal's decision in the case of *IBM India Pvt. Ltd.*, itself for the assessment year 2008-09, it was held that there was no fringe benefit on the in-house training expenditure. The relevant portion of the Tribunal order at para.18 is reproduced hereunder:

"18. We have perused the orders and heard the rival contention. Learned CIT(A) had in disallowing the related grounds chose to differ from his predecessor's order for assessment year 2008-09. However, this Tribunal had considered the issue of liability of FBT on in-house training and related travel cost, even when the training was given elsewhere, in revenue's appeal for assessment year 2008-09, in assessee's own case mentioned supra. It was held as under by this Tribunal at para 6.3.1 to 6.3.2 of its order.

"6.3.1 We have heard both parties and carefully perused and considered the material on record and the judicial decisions cited. The assessee is aggrieved with the decision of the learned CIT(Appeals) that reimbursement of travel, boarding and lodging expenses to faculty amounting to Rs.2,93,24,280 incurred in connection with the in-house training is liable to FBT. The Assessing

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Officer was of the view that FAQ No.13 of Circular No.8 of 2005, that reimbursement of expenditure for the purposes of conveyance, tour and travel by professionals like auditors or lawyers not being liable to FBT, would not be applicable in the assessee's case. Rather, the Assessing Officer relied on FAQ No.51 in support of his view that reimbursement of expenses to faculty is liable for FBT. In our considered opinion, the reference in FAQ No.13 of CBDT Circular No.8 of 2005 that reimbursement of expenditure incurred by a professional like a lawyer or an auditor is illustrative and does not restrict reimbursement of expenditure to auditors and lawyers alone but even cover reimbursement of expenditure to other third parties is also covered by FAQ No.13 of CBDT Circular No.8 of 2005. FAQ No.51 of the said circular is not applicable in the present case since reimbursements are made to third parties like faculty for training and not the assessee's employees. These payments do not result in any collective enjoyment of benefit by the employees of the assessee. The learned counsel for the assessee has filed a compilation of various decisions in support of the assessee's contention that genuine business expenditure that does not result in collective enjoyment of benefit by employee is not liable to FBT. The Hon'ble jurisdictional High Court of Karnataka in the case of CIT Vs. Karnataka Power Transmission Corporation Ltd in ITA No.368 of 2011 dt.7.2.2012 (pages 43 to 48 of compilation of decisions / materials) at para 10 thereof has held that unless fringe benefits are extended by the employer to the employees and the same are enjoyed by the employees, there is no question of levying FBT on the employer. The co-ordinate bench of the Bangalore Tribunal in the decision in the case Toyota Kirloskar Motor P. Ltd. (supra) (pages 65 to 92 of compilation of decisions), to which both of us are party, after referring to various decisions, held that regular business expenditure having no collective benefit by the employees is not liable for FBT. The relevant portion at para 11.3 of the said order is extracted hereunder :

"11.3 The Finance Minister's speech and the memorandum explaining the FBT provisions provides the rationale for levying FBT on the employer lies in the inherent difficulty in isolating the 'personal element' when there is no collective enjoyment of such benefits and in attributing the same directly to the employee. It further provides that where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, it is proposed to levy a separate

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tax known as FBT on the employer on the value of such benefits provided or deemed to have been provided to the employees. Thus, the intention of creation of a deeming fiction under section 115WB(2) is to include an expenditure resulting in collective enjoyment of fringe benefits by the employees and it is difficult or not feasible to attribute such benefit personally to employees. The legislature itself has clarified that where the benefits are fully attributable to employees, the same continues to be taxable in the hands of the employees. On a plain reading of sub-section 1 and 2 of section 115WB, it would be evident that sub-section 1 covers those fringe benefits which can be fully attributed to employees and sub-section 2 covers those fringe benefits the personal attribution of which it is difficult to make. Thus, in our opinion, the deeming fiction under section 115WB(2) is limited to those expenditures which result in collective enjoyment of benefits by the employees and where personal attribution of benefit poses difficulty. It is only under these circumstances that, the deeming fiction under section 115WB(2) comes into play. In a case where the benefit is fully attributable to employees or where the expenditure does not result in any benefit at all to employees, as in the instant case, the deeming fiction under section 115WB(2) is not attracted and consequently, no FBT can be levied on the employer.”

6.3.2 *In the present case of the assessee, the reimbursement of travel, boarding, lodging and other incidental expenses to faculty constitute payments made to third parties in the course of business. These payments are not paid to the assessee's employees nor do the payments result in any benefit to the employees. Consequently, we hold that the said expenditure is not liable for FBT. Further, it is seen from the record that the learned CIT(Appeals) had deleted the addition made by the Assessing Officer in respect of faculty and course charges amounting to Rs.82,51,22,958 sustaining only the addition in respect of reimbursement of travelling cost and other incidental expenditure amounting to Rs.2,93,24,280 and we find that revenue has not challenged this deletion by the learned CIT(Appeals) in appeal before us. When payments made to faculty for in-house training and course charges amounting to Rs.82,51,42,958 is not liable for FBT, there appears to be no justifiable reason as to why the same treatment should not be extended to reimbursement of incidental expenses like travel, boarding*

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and lodging and other incidental expenses to faculty for the same purpose. In view of the above, we are of the considered opinion that reimbursement of incidental expenses like travel, boarding and lodging expenses to faculty in connection with in-house training amounting to Rs.2,93,24,280 is not liable to FBT. Accordingly, the assessee's ground at S.No.4 is allowed".

Accordingly, we hold that there was no fringe benefit in the in-house training expenditure. Grounds 6 to 8 of the assessee are allowed."

7.3.6 Respectfully following the above decision, we hold that the expenditure incurred by the assessee towards in-house training of the employees, particularly when the payments are to outside parties, is not liable to FBT. However, the issue is remitted to the file of the AO for verification of the details and only such amounts which are incurred towards food and beverages, travel and lodging and boarding of the employees towards their in-house training can be brought to tax as fringe benefit. Payments made to third parties cannot be brought to tax. This ground is thus treated as allowed for statistical purposes.

8. In the result, both the assessee's as well as Revenue's appeals are treated as partly allowed for statistical purposes.

Pronounced in the open court on 30th July, 2015.

sd/-
(Jason P Boaz)
ACCOUNTANT MEMBER
eksrivasulu, sr.ps

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore