

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 420/Kol/2016

Assessment Year : 2008-09

Gaurav Seksaria
[PAN: AKFPS 4416 E]
(Appellant)

-vs- ITO, Ward-3(4), Kolkata
(Respondent)

For the Appellant : Shri A.K. Tibrewal, FCA

For the Respondent : Shri Arindam Bhattacharjee, Addl. CIT

Date of Hearing : 09.11.2017

Date of Pronouncement : 29.11.2017

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-23, Kolkata [in short the Id CIT(A)] in Appeal No.130/CIT(A)-23/Ward-3(4)/2014-15/Kol dated 11.12.2015 against the order passed by the ITO, Ward-3(4), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 24.12.2010 for the Assessment Year 2008-09.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the addition of Rs 1,24,574/- being 10% of overall expenses incurred by the assessee through credit card on behalf of the employer, in the facts and circumstances of the case.

5. The Id CITA on going through the submissions of the assessee restricted the addition to 10% of expenses as against 50% made by the Id AO, by observing as under:-

Decision

1. *I have examined the assessment order of the AO, and the matters agitated in appeal. In effect there is only one matter to adjudicate, being that whether in the facts and circumstances of the case, the AO was correct in holding that the expenditures/payments made through the credit card by the employee on behalf of the employer were of personal nature and whether the Employer-Company had met the assessee's obligation requiring certain payments to be made, and therefore, the same was taxable as perquisites in the hands of the assessee-appellant.*
2. *The AO has observed that the payments were made by the Company on behalf of the appellant, and this is not a matter of dispute. The AO has also not questioned the sources of the fund, and the assessee's explanation that the sources were from the Company M/s Govind Steel Co. Ltd. has also not been disputed. The AO has noticed that the assessee had paid bills worth Rs. 13,40,817/- from the credit card and has, on the basis of the nature of bills made a disallowance of 50%.*
3. *It is also seen that there AO has treated 50% of the expenses as personal in nature. This has been done in an ad hoc fashion, and the rationale leading to this certain percentage does not emanate from the findings of the order of the AO.*
4. *It has been pleaded during the course of the appellate proceedings that the Company in which the assessee-individual is the full-time director has paid the necessary FBT for the Assessment year 2008-09, and therefore the same ought not to be treated as perquisites in the hands of the appellant. Accordingly, the FBT return of the Company was also submitted during the course of appellate proceedings. From the same the following points relating to FBT payments emanate.*

Nature of expenditure	Amount/value of expenditure(Rs)	Percentage (%)	Value of FB (Rs.)
<i>Sales Promotion</i>	<i>1,75,782</i>	<i>20</i>	<i>35,156</i>
<i>Employee's Welfare</i>	<i>1,47,435</i>	<i>20</i>	<i>29,487</i>
<i>Conveyance in the Business</i>	<i>1,58,272</i>	<i>20</i>	<i>31,654</i>
<i>Repair, maintenance of Motor Car</i>	<i>4,63,122</i>	<i>20</i>	<i>92,624</i>
<i>Use of telephones including mobiles</i>	<i>3,82,030</i>	<i>20</i>	<i>76,406</i>
<i>Tour and travel including</i>	<i>26,44,787</i>	<i>5</i>	<i>1,32,239</i>

<i>foreign travel</i>			
<i>Total</i>			3,97,566

5. *It has also been contended during appeal that the expenditure on electronics items and cloths were negligible and were incurred overseas for the purposes of gifting to customers/clients of M/s Govind Steel Co. Ltd. The appellant has, in his favour cited the cases of MIS Oil & Natural Gas corporation Ltd Vs Assistant Commissioner of Income Tax (DS)- ITAT (Ahd) [20~3] 34 taxmann.com 172 (Ahmadabad Bench) and the judicial citation in Shri Bipin Kotak Vs ACIT, Central Circle, Mumbai in ITA NO 4866/Mum/2009 [A.Y 2006-07] in the ITAT, Mumbai Bench, "H", Mumbai, date of order being 29th July, 2011. In the said second case I judgment there are similar sets of facts and circumstances wherein as para No. 5 the Hon'ble ITAT has observed as under:*

05. "We have heard the arguments of both the sides and also perused the relevant material on record. Th'e learned counsel for the assessee has taken us through the CBOT circular No. 8/2005 dated 29.08.2005 giving explanatory notes on the provisions relating to fringe benefit tax as introduced by the Finance Act, 2005 and invited our attention to the relevant portion thereof to explain the object behind levying fringe benefit tax. As indicated in the Said circular, the fringe benefit tax has been introduced as a surrogate tax on' employer with the objects of resolving the problems in, taxing some perquisites/fringe benefits in the hands of the employees in terms of section 17. Further, as explained in para No. 3.2 of the Circular, the scope of the term "fringe benefits provided" is defined in section 115WB(1) to mean any consideration for employment provided by way of any privilege, service facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees. Moreover, as clarified in the said circular while answering frequently asked question No. 15, fringe benefit is deemed to have been provided if the employer has incurred expenses for any of the purpose referred to in the relevant provisions and there is no requirement to segregate such expenses between those incurred for official purposes and personal purposes. It was further clarified while answering question No. 81 that when expenditure on running and maintenance of motor cars is liable to fringe benefit tax, the. Employees will not be liable to income tax on the perquisite value of motor car provided by the employer. As rightly contended by the learned counsel for the assessee, circular no. 8/2005 dated 29. 08.2005 issued by the Board explaining the provisions relating to fringe benefit tax thus makes it clear that although fringe benefit tax is recovered from employer, the same actually is the levy on employees for any privilege, service, facility or amenity directly or indirectly provided by the employer whether by way of reimbursement or otherwise. As further clarified in the circular, fringe benefit tax is levied on the expenses incurred by the employer irrespective of whether the same are incurred for official or personal purposes. It has also been

clarified that whatever perquisites are liable to fringe benefit tax, the employees will not be liable to income-tax on the value of the said perquisites. "

6. *In view of the above I find strength In the argument of the appellant that he ought not to be taxed as the FBT has been paid by the employer-company. However, it is seen that only some of the items are covered by the element of FBT as borne by the Company, notably the items of telephones, foreign tour and sales promotions. As per the breakup rendered by the appellant, the total payments during the year under consideration ought to be less by Rs. 1,25,744/- as this amount relate to expenses incurred during the F.Y. 2006-07, and therefore they are beyond the purview of the A.Y. 2008-09 under consideration. Therefore, the amount in question gets reduced by that extent, and stands at Rs. 12,45,744/- (Rs. 13,70,886 less Rs. 1,25,744). On further analysis for the payments made through the credit card, relevant for the A.y. 2008-09, it is seen that the FBT payments by the company covers Sales Promotion, Foreign Travel and use of the telephone bills including mobile bills, but does not cover the hotel and restaurant expenses and gifts to customers, which are partly of a direct and personal nature.*
7. *In view of the above, I am of the opinion that it would meet the ends of justice if the disallowance is restricted to 10% of the overall expenses or 10% of Rs. 12,45,744/- or Rs. 1,24,574/-. This, in my opinion would cover all items of expenses whether covered by the FBT payments by the Employer Company or otherwise.*

In summary, the addition to the extent of Rs. 1,24,574/- is sustained, and the balance is deleted. The appellant gets relief accordingly."

6. Aggrieved, the assessee is in appeal before us on the following grounds:-

1. *That in the facts and circumstances of the case the Learned Commissioner of Income Tax (Appeals)-23, Kolkata, erred in arbitrary confirming the addition of Rs. 1,24,574 being 10% of the overall expenses incurred by the Assessee through credit card on behalf of its employer.*
2. *That the appellant craves leave to take additional grounds, and /or to amend or withdraw any of the foregoing grounds before, or at the time of hearing of this appeal.*

7. We have heard the rival submissions. We find that the ld AR argued that the entire expenditure incurred through credit cards by the assessee for and on behalf of the company has been furnished before the ld CITA to the tune of Rs 13,70,886/- which is

included in the FBT return under the head 'Tour and Travel including foreign travel' of Rs 26,44,787/-. Accordingly it was argued that the expenditure incurred through credit card have duly been included in the FBT return filed by the company i.e Govind Steel Co. Ltd . Once an expenditure is included in the FBT return, the Id AR by placing reliance on the CBDT Circular No. 8/2005 dated 29.8.2005 argued that the same cannot be treated as perquisite in the hands of the employee. In response to this, the Id DR vehemently relied on the orders of the lower authorities. We find that the expenditure incurred by the assessee employee in his credit card during foreign travel visits , for and on behalf of the company M/s Govind Steel Co. Ltd , is not disputed by the revenue. In fact there is a specific finding in this regard in the order of the Id CITA as stated supra. It is not in dispute that the assessee employee had not claimed any expenditure as deduction which were incurred by him through credit card during his foreign travel. He incurred expenses through credit cards and the same were reimbursed to him by the company M/s Govind Steel Co. Ltd. Moreover, the said expenses were included in the FBT return and hence by placing reliance on the Circular No. 8/2005 dated 29.8.2005, there cannot be any element of perquisite to be taxed in the hands of the assessee employee. In any case, if at all, there is no doubt in the mind of the revenue with regard to the subject mentioned expenses, the revenue could examine the same only in the hands of the company M/s Govind Steel Co. Ltd and not in the hands of the assessee employee. We find that both the authorities below had grossly erred in making some addition towards the same on an estimated basis. Hence we have no hesitation in directing the Id AO to delete the entire addition made in this regard. Accordingly the Grounds raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 29.11.2017

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 29.11.2017

SB, Sr. PS

Copy of the order forwarded to:

1. Gaurav Seksaria, 219, Chittaranjan Avenue, Girish Park, Kolkata-700013
2. ITO, Ward-3(4), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
- 3..C.I.T.- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches