

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.394/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

The Poona Stud Farm Pvt. Ltd.,
16 / B – 1, Sarosh Bhavan,
Dr. Ambedkar Road,
Pune – 411 001.

..... अपीलार्थी /
Appellant

PAN : AAAC6849F.

बनाम v/s

Income Tax Officer (Tech & Judl.)-IV,
Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Nikhil Pathak &
Shri Vishnu Bhutada.

Revenue by : Shri Achal Sharma, Addl.CIT.

सुनवाई की तारीख / Date of Hearing : 30.01.2018	घोषणा की तारीख / Date of Pronouncement: 31.01.2018
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee u/s 253 of the Act is emanating out of the order of Commissioner of Income Tax (A) - Pune – 5, Pune dt.28.01.2016 for the assessment year 2006-07.

2. The relevant facts as culled out from the material on record are as under :-

2.1 Assessee is a company engaged in the business of breeding, rearing and sale of race horses. Assessee electronically filed Fringe Benefit Tax (FBT) return for A.Y. 2006-07 on 25.11.2006 showing

total value of fringe benefits at Rs.1,66,827/-. The case was selected for scrutiny and thereafter assessment was framed u/s 115WE(3) of the Act vide order dt.29.12.2008 and the total value of fringe benefit was determined at Rs.4,98,290/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.28.01.2016 (in appeal No.PN/CIT(A)-5/ITO, Tech & Jud – IV/Rg-07/Pune/12/2008-09) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The Ld.CIT(A) erred in Charging Fringe Benefit Tax (ignoring the provisions of Sec.115WA) on expenses incurred by appellant on persons who are not its employees.

2. The Ld.CIT(A) erred in assessing ‘Fringe Benefit (‘FB’) and imposing tax thereon on following expenses incurred by the appellant (stated in the column ‘Disputed amount of FB’)

Sr No	Expenditure		% as per		FB' as per		Disputed amount of FB
	Nomenclature	Amount	Ap'lant	A.O.	Ap'lant	A.O.	
1	Contribution to approved super-annuation fund.	3,37,038	100% (above Rs.1 lac per employee)	100%	1,10,784	3,37,038	2,26,254 (1)
2	Personal accident insurance premium	31,233	Nil%	20%	Nil	31,233	31,233 (2)
3	Medical reimbursement	15,000	Nil%	20%	Nil	15,000	15,000 (3)
4	Conveyance expenses	34,000	Nil%	20%	Nil	6,800	6,800 (4)
5	Tour & Travel expenditure	4,49,358	5%	20%	22,468	89,872	67,404 (5)

3. Before us, Ld.A.R. submitted that he does not wish to press ground No.1 and the same is therefore dismissed as not pressed.

4. (a) During the course of assessment proceedings, AO noticed that assessee has contributed to approved superannuation fund of Rs.3,37,038/- but had considered

only an amount of Rs.1,10,784/- for calculation of value of FBT as it was of the view that the amendment to Sec.115WC(1)(b) by the Finance Act, 2006 stating that contribution to superannuation fund in excess of Rs.1,00,000/- per employee is liable to FBT is clarificatory in nature and therefore would apply to the assessment year under consideration. The assessee therefore considered only Rs.1,10,784/- as FBT. The submission of the assessee was not found acceptable to the AO. He considered the total value of Rs.3,37,038/- as the value of FBT and after giving credit to Rs.1,10,784/- which was offered by assessee, determined the balance amount of Rs.2,26,254/- as value of FBT.

(b) AO also noticed that out of the total Employee Welfare expenditure of Rs.2,01,549/- assessee had considered an expenditure of Rs.31,233/- as being liable to FBT. AO on perusing the details noticed that an amount of Rs.39,989/- representing the payment of Personal Accident Premium which was paid for the benefits of the employees has not been considered by the assessee while arriving at the value of FBT. He accordingly considered 20% of the same as the value of the fringe benefit. He also noticed that assessee had paid an amount of Rs.15,000/- towards Medical Reimbursement which was not considered for the purpose of fringe benefit based on the Clarificatory Circular of CBDT 8 of 2005 dt.29.08.2005. AO was of the view that when the reimbursement exceeds Rs.15,000/-, the same is to be

considered for valuation of fringe benefit. He accordingly considered the amount of medical reimbursement of Rs.15,000/- for the purpose of fringe benefit.

(c). AO noticed that assessee had incurred total expenditure of Rs.72,308/- as Conveyance Expenses but it had considered an expenditure only of Rs.38,308/- as being liable for fringe benefit tax. On perusing the details AO noticed that an amount of Rs.34,000/- which represented the conveyance charges paid to the Directors were not considered by the assessee while arriving at the value of FBT. He accordingly considered the amount of conveyance charges paid to the Directors (Rs.34,000/-) as to be liable for FBT.

(d). AO noticed that assessee had incurred expenditure of Rs.4,49,358/- towards Tour and Travel expenditure. Assessee after considering the amendment by Finance Act offered only 5% of the expenses on tour and travel expenditure to be liable for FBT as it was of the view that the amendment made by Finance Act was clarificatory in nature. The submission of the assessee was not found acceptable to the AO. He considered the entire amount on tour and travel expenditure of Rs.4,49,358/- as the fringe benefit.

5. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us.

6. Before us, Ld.A.R. pointed to the table below ground No.2. From the aforesaid table he submitted that assessee does not wish to press the ground with respect to tour and travel expenditure of Rs.4,49,358/-. With respect to the personal accidental premium of Rs.31,233/-, he fairly conceded that identical issue arose before the Pune Bench of the Tribunal in the case of Intervolve (India) Limited in ITA No.1262/PN/2010 order dt.20.06.2012 and this issue has been decided against the assessee vide para No.14 of the order. He therefore submitted that this issue be decided accordingly.

7. (a). With respect to the expenditure of medical reimbursement of Rs.15,000/- he submitted that an identical issue arose before Pune Bench of the Tribunal in the case of Intervolve (India) Ltd., (supra) and the issue has been decided in favour of the assessee at para No.15 of the order. He therefore submitted that relying on the aforesaid order of the Pune Bench of the Tribunal, the ground be decided in assessee's favour.

(b). With respect to the contribution towards approved superannuation fund of Rs.3,37,038/- he submitted that identical issue arose before the Jaipur Bench of the Tribunal in the case of DCIT Vs. State Bank of Bikaner & Jaipur in ITA No.548/JP/2011 order dt.21.10.2011. The Co-ordinate Bench of the Tribunal of Jaipur after relying on the decisions of Jaipur Tribunal in the case of Rajasthan Rajya Vidyut

Utpadan Nigam Limited the speech of Finance Minister and the memorandum of explaining the provisions of the Bill and thereafter held that the amendment made to Sec.115WB(1)(c) by Finance Act is retrospective and is applicable to assessment year 2006-07. He submitted that in the case of assessee, the assessment year involved is A.Y. 2006-07 and therefore relying on the decision of Jaipur Bench of the Tribunal, the issue be decided accordingly.

(c). With respect to the conveyance expenses of Rs.34,000/-, he pointed to the submissions made before Ld.CIT(A) and submitted that it was incurred for the conveyance expenses of non-executive Directors and consultants, who were not the employees of the assessee. He submitted that since these persons are not the employees of the assessee, the question of paying FBT does not arise and for this proposition, he relied on the decisions in the case of DCIT Vs. Kotak Mahindra Old Mutual Life Insurance Ltd., reported in 134 ITD 388 (Mum) and Joshi Technology International Incorporation reported in 157 TTJ 468 (Ahd). Ld.D.R. on the other hand, supported the order of AO.

8. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to consideration of fringe benefit of the various expenses. Before us, Ld.A.R. has submitted that he does not wish to dispute the fringe benefit with respect to tour and travel expenditure of Rs.4,49,358/-.

With respect to the expenditure of Personal Accident Premium, we find that the Pune Bench of the Tribunal in the case of Intervalve (India) Ltd., (supra) has decided the issue against the assessee by holding as under :

“14. In Ground No. (4), the assessee claims that FBT has been wrongly charged with respect to the insurance premium paid of Rs 22,561/- on Group Accident Policy. The claim of the assessee is that in terms of section 115WB(2)(E) expenses on employees’ welfare which are other than the exceptions provided therein are not liable to be considered for levy of FBT. As per the assessee, it is engaged in the business of manufacture of engineering products and it has taken an accidental insurance policy covering its employees for loss of life, medical treatment if met with an accident. The assessee submits that in terms of Explanation to section 115WB(2)(E) any expenditure on employees’ welfare incurred to fulfill any statutory obligation or mitigate occupational hazards, etc., is also not liable to be considered for levy of FBT and that in the present case, such expenditure is of the nature covered by such Explanation to section 115WB(2)(E) of the Act. We find that the Commissioner of Income-tax (Appeals) has observed that the impugned expenditure is not on account of a statutory obligation and, therefore, the same does not fall within the exceptions provided in the Explanation to section 115WB(2)(E) of the Act. On this aspect, we find no cogent controversion on the part of the assessee and accordingly the action of the Commissioner of Income-tax (Appeals) on the basis of reasons contained therein is hereby affirmed. Thus, on this Ground, the assessee fails.”

9. Before us, assessee has not placed any contrary binding decision in its support. In view of these facts, issue with respect to the expenditure of Personal Accident Premium is decided against the assessee.

10. With respect to the expenditure of Medical Reimbursement of Rs.15,000/-, we find that the Co-ordinate Bench of the Tribunal in the case of Intervalve (India) Ltd., (supra) after relying on various decisions cited in the order, has decided the issue in favour of assessee by holding as under :

“15. Ground No. (5) is with regard to the charging of FBT on the reimbursement of medical expenses to the extent of Rs 15,000/-. The contention of the assessee is that reimbursement of medical expenses to the extent of Rs 15,000/- is exempt in the hands of the employee

and to the extent of such exempted allowance, it was also not liable to be considered for FBT in the hands of employer. In this connection, we find that our co-ordinate Benches, namely, the Mumbai Bench of the Tribunal in the case of Godrej Properties Ltd. v. Addl. CIT (2011) 16 Taxmann.com.298 (Mum) and the Bangalore Bench of the Tribunal in the case of Bosch Ltd. V. DCIT (2011) 15 Taxmann.com.187 (Bang) have opined that medical reimbursement is taxable as perquisite in the hands of individual employees and merely because grant of such exemptions, same cannot be said to be a fringe benefit for the purposes of Chapter XII-H of the Act. Thus, on this Ground, the assessee succeeds.”

11. Before us, Revenue has not placed any contrary binding decision in its support. We therefore following the decision laid down by Pune Bench of the Tribunal in the case of Intervolve (India) Ltd., (supra) hold that medical reimbursement of Rs.15,000/- is not liable for FBT.

12. With respect to contribution of approved superannuation fund of Rs.3,37,038/-, we find that the Jaipur Bench of the Tribunal in the case of DCIT Vs. State Bank of Bikaner & Jaipur (supra) has held that the amendment made to Sec.115WB(1)(c) is retrospective and is applicable for A.Y. 2006-07. The observations of Jaipur Bench of the Tribunal are as under :

“3. The Tribunal vide order dated 27.11.2009 in the case of Rajasthan Rajya Vidyut Prasaran Nigam Ltd. considered that the amendment has been made as welfare measure for overwhelming majority of employees to make it parallel with the deduction provided u/s 80C read with Section 80CCD. Such view was taken after combined reading of the speech of Finance Minister and the memorandum explaining the provisions of the bill. It will be useful to reproduced para 10 of the order of the Tribunal dated 27.11.2009:-

“The above principle of interpretation laid down in various judgments of Hon'ble Supreme Court when read in context with the purchase and intention for which the amendment was made u/s 115WB(1)(c) leaves no scope of debate that the said amendment was to remedy the unintended consequences and therefore,, it is required to be considered as retrospective in operation so that a reasonable interpretation can be given to the scheme of levy of fringe benefit tax on contribution to

superannuation fund as a whole. We, therefore, hold that the contribution to superannuation fund in present case being less than Rs. 1.00 lac per employee, is not liable for fringe benefit tax. In the result, this ground of assessee is allowed.”

4. The above referred decision has been followed in the following order:-

Rajasthan Rajya Vidyut Utpadan Nigam Ltd., I.T.A. No. 730/JP/20/2009 order dated 26.2.2010

Since the issue before us stands covered by the decision of the Tribunal and hence following the decision of the Tribunal, we hold that the Ld. CIT(A) was justified in holding that the addition by treating the contribution made to SBBJ Employees Pension fund as not liable to FBT as amendment made in Section 115WC(1)(b) is retrospective and applicable to the assessment year 2006-07.”

13. Before us, Revenue has not placed any contrary binding decision in its support. We therefore, following the decision of Jaipur Bench of the Tribunal, hold that the amendment to Sec.115WB(1)(c) is retrospective and is applicable to the year under consideration. Thus this part of the ground is decided in favour of the assessee.

14. With respect to conveyance expenses of Rs.34,000/-, it is assessee's submission that the amount of conveyance expenses has been paid for the non-executive Directors and consultants, who were not the employees of the assessee. The aforesaid contention of assessee has not been controverted by Revenue. We find that the Co-ordinate Bench of the Tribunal of Ahmedabad Bench in the case of Joshi Technology International Incorporation (supra) has held that FBT is allowable only in a case where expenditure is incurred by the employer ostensibly for the purpose of business but includes partially a benefit of a personal nature passed on to the employees. It further held that legitimate business expenditure not within the

ambit of employer - employee relationship is outside the scope of FBT. Before us, Revenue has not placed any contrary binding decision in its support. We therefore hold that the conveyance expenses incurred on non employees is not liable for FBT. **Thus, this portion of the ground is decided in assessee's favour.**

15. **In the result, the appeal of assessee is partly allowed.**

Order pronounced on 31st day of January, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 31st January, 2018.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A), Pune-5, Pune.
4. Pr.CIT, Pune-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

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वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.