

which came into force w.e.f 1-4-06 and the A.Y under consideration is relating to A.Y 2006-07. In view of which, the assessee is liable to pay tax on fringe benefits. However, on similar set of facts and circumstances of the case, the Co-ordinate Bench, ITAT, Kolkata, 'B' Bench in the case of M/s. Ashok Trading Co. in ITA No. 141/Kol/2013 vide order dt. 06-08-2015 held that the default on the part of the assessee in the first year of applicability of FBT cannot be considered as malafide and cancelled the penalty for non filing of return involving the fringe benefits. In the present case, the AO found non-compliance of fringe benefit during the assessment proceedings being first year of applicability of charging of FBT, in our opinion the facts of the present case and the facts with that of Co-ordinate Bench in the case of *supra* are similar and identical. Relevant portion of the said order is reproduced herein below for better appraisal:-

"8. We have considered the submissions of both the parties and have perused the records of the case. There is no dispute that the assessee was required to file the return of Fringe Benefit. As per sub-section (2) of section 115WD, if the assessee had not filed the return of Fringe Benefit but in the opinion of Assessing Officer he should have filed the return, the Assessing Officer would issue notice requiring it to file such return, but no such notice was issued by the Assessing Officer. All the facts came to the notice of the Assessing Officer only in the course of assessment proceedings and there is no charge of the Department that the assessee concealed any particulars or submitted inaccurate particulars of income. No doubt, there is specific requirement of filing the return of income, but since it was the first year of applicability of Fringe Benefit Tax, when FBT return was required to be filed and due taxes were paid by assessee, therefore, we are of the opinion that the default on the part of the assessee cannot be considered as malafide and we cancel the penalty for non-filing of return. "

4. Following the above, we set aside the order of the CIT-A in confirming the impugned penalty imposed of Rs.2,00,700/- u/s. 271 FB of the Act and direct the AO to cancel the same. Accordingly, the ground nos. 1 to 4 raised by the assessee in the appeal for the A.Y under consideration are allowed.

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

Order pronounced in the open court on 9-03-2018

Sd/-
J. Sudhakar Reddy
Accountant Member

Dated : 9-03-2018

Sd/-
S.S. Viswanethra Ravi
Judicial Member

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Supreme Construction
C/o S.N. Ghosh & Associates, Advocates, Seben Brothers' Lodge,
P.O Buroshibtala, P.S Chinsurah, Dist: Hooghly – 712105.
2. Respondent/Department : Asstt. Commissioner of Income Tax,
Cir-2, Hooghly, Aaykar Bhawan, Hooghly, G.T Road, Khadina More, P.O
Chinsurah P.S Chinsurah, Dist: Hooghly 712101.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order, Sr.PS/H.O.O

ITAT Kolkata