**आयकर अपील य अ धकरण, ''डी" यायपीठ, चे नई**

**IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI**

**ी अ ाहम पी. जॉज, लेखा सद य एवं ी धु वु आर.एल रे डी, याियक सद य के सम**

**Before Shri Abraham P. George, Accountant Member &**
**Shri Duvvuru RL Reddy, Judicial Member**

**I.T.A.Nos.846 and 847/Mds/2017**
**Assessment Years: 2006-07 and 2007-08**

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| M/s. Auro Food Limited,<br>34/76, III Floor, C.S. Towers,<br>Bazullah Road, Chennai 600 017. | Vs. | The Deputy Commissioner of Income Tax,<br>Company Circle 1(1)<br>Chennai. |

**[PAN: AAACA5360Q]**

| (**अपीलाथ /Appellant**) | | (**यथ /Respondent**) |
|---|---|---|
| अपीलाथ क ओर से / Appellant by | : | Shri A.S. Sriraman, Advocate |
| यथ क ओर से/Respondent by | : | Mrs. S. Vijayaprabha, JCIT |
| सुनवाई क तारीख/ Date of hearing | : | 17.01.2018 |
| घोषणा क तारीख /Date of Pronouncement | : | 28.02.2018 |

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

Both the appeals filed by the same assessee are directed against different orders of the ld. Commissioner of Income Tax (Appeals) 5/ CIT(A) 1, Chennai dated 11.01.2017 and 03.01.2017 for the assessment years 2006-07 and 2007-08 respectively. Since common ground raised in both the appeals, heard together and are being disposed of by this common order for the sake of convenience. First, we shall take the appeal for the assessment year 2006-07.

**I.T.A. No. 846/Mds/2017**

2. This appeal of the assessee is found to have been filed late by 16 days before the Tribunal. By referring to the petition for condonation of delay, the ld. Counsel for the assessee has submitted that the assesseeôs CA partner fell ill and escaped his attention to file the appeal before the Tribunal within the time provided under the Act. He also submitted that the delay in filing the appeal was neither wilful nor deliberate, but, due to the reasons beyond the control of the assessee and prayed to admit the appeal for hearing. The ld. DR did not object to the submissions of the ld. Counsel and therefore, we condone the delay of 16 days in filing the appeal and admit the appeal for hearing.

3. The first ground raised is with regard to validity of reassessment. The assessee filed its return of fringe benefit on 31.10.2006 for the assessment year 2006-07 admitting NIL fringe benefit income. The return was processed under section 115WE(1) of the Income Tax Act, 1961 [ñActò in short] on 22.11.2007. The case was reopened under section 115WG of the Act and notice under section 115WH(3) of the Act was issued on 22.03.2013. After considering the submissions of the assessee, the assessment under section 115WE(3) r.w. section 115WG of the Act was completed by making various additions.

4. The assessee carried the matter in appeal before the ld. CIT(A). After considering the submissions of the AR of the assessee as well as written submissions and also considering the facts and circumstances, the ld. CIT(A) partly allowed the appeal filed by the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. With regard to reopening of assessment, by referring to ground No. 4, it was the submissions of the ld. Counsel that the assessment was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law and prayed that the reassessment proceedings should be quashed. On the other hand, the ld. DR strongly supported the orders of authorities below.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, notice under section 115WH(3) of the Act was issued on 22.03.2013, which is well within the time provided under the provisions of section 115WH(3) of the Act for the following reasons:

> *"The assessee company had filed the return of income for the AY 2006-07, the same was processed and not scrutinized. It is noticed from the return of income that the assessee have incurred following expenses, which attract the provision of FBT, but the same was not included for the working of FBT as per FBT return statement:*
>
> *a) Workman & staff welfare expenses amount to ₹.23,98,000/-.*
> *b) Sales promotion of ₹.3,03,29,000/-*

*As the income chargeable to FBT has escaped assessment, the case is reopened for further proceedings."*

In this case, admittedly, no scrutiny assessment was completed. Therefore, we are of the considered opinion that the Assessing Officer, within his jurisdiction, validly completed the assessment under section 115WE(3) r.w. section 115WG of the Act within the time provided under the Act on specific points. Accordingly, the ground raised by the assessee is dismissed.

7. The next ground raised in the appeal of the assessee is with regard to confirmation of addition of ضي2,26,000/-. The assessee has claimed expenses to the extent of ضي23,98,000/- towards welfare expenses. Before the Assessing Officer, the assessee failed to state that the expenses incurred were whether incidental to any statutory obligation or not. Hence, except ضي12,85,000/- towards HRA, the Assessing Officer treated rest of expenses to the extent of ضي11,13,000/- to be expenses attracting fringe benefit and accordingly a sum 20% of ضي11,13,000/- i.e., ضي2,26,000/- was brought to tax.

7.1 On appeal, after considering the written submissions filed by the AR of the assessee on 03.01.2017, the ld. CIT(A) confirmed the addition of ضي2,26,000/-, since the assessee has not brought on record any material to explain the nature of the welfare expenses of ضي 11,13,000/-.

7.2 We have heard rival contentions. The ld. Counsel for the assessee simply reiterated the submissions as made before the authorities below.

Even before the Tribunal, the assessee has not brought on record any material to explain the nature of the welfare expenses to the extent of ضي11,13,000/- to prove that these expenses were not in the nature of fringe benefit. Accordingly, the ground raised by the assessee is dismissed.

**I.T.A. No. 847/Mds/2017**

8. The only effective ground raised in this appeal is that the ld. CIT(A) erred in confirming the addition towards levy of fringe benefit tax. In the assessment order, the Assessing Officer has observed from the profit and loss account of the assessee that the following taxable fringe benefits have not been admitted:

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| Car Insurance | ضي | 4,105 |
| Car depreciation | ضي | 29,593 |
| Car maintenance | ضي | 1,26,599 |
| Telephone | ضي | 5,43,676 |
| Travelling expenses | ضي | 3,91,200 |
| Conveyance | ضي | 4,56,900 |
| Travelling conveyance of marketing personnel | ضي | 8,94,426 |
| Boarding & lodging | ضي | 16,74,478 |
| Sundry sales promotion | ضي | 3,56,945 |
| Telephone reimbursed to sales personnel | ضي | 2,76,292 |
| Petrol reimbursement | ضي | 48,94,209 |

8.1 Since the AR of the assessee did not offer any explanation on the omission of the above items of taxable fringe benefits, the Assessing Officer added the above sum to the value of taxable fringe benefits retuned by the assessee. In addition to the above the Assessing Officer further observed that the assessee in the Annexure to Audit Report has certified that an

amount of ضي1,90,557/- was given as perquisite to Shri M.A. Patel, the Director of the assessee company. However, on a perusal of the Form 16 issued by the assessee to Shri Patel, the Assessing Officer noticed that only an amount of ضي57,600/- was considered as taxable in his individual hands. Since, the perquisites not taxed in the hands of the employee are subject to tax as fringe benefit on the hands of the employer, the difference amounting to ضي1,32,957/- was also added to the returned value of fringe benefits. On appeal, the ld. CIT(A) confirmed the addition towards levy of fringe benefit tax.

8.2 We have heard rival contentions. From the profit and loss account of the assessee, the Assessing Officer noticed that various fringe benefits have not been admitted. However, while bringing those expenses under FBT, it is not clear from the assessment order under what account the expenses have been incurred. To be subject to fringe benefits tax, two essential requirements must be satisfied. First, the benefit must be provided to an employee (or associate) and, second, the benefit must be provided in respect of the employment of the employee. Unless a benefit is provided in the context of an employer-employee relationship, the tax has no application. No details are emanating from the orders of authorities below. Various Benches of the Tribunal as well as High Courts have held that employer-employee relationship between the assessee and the person on

whom expenses were incurred is sine qua non for expenses being subjected to the FBT regime and in the absence of such relationship, the expenses incurred in those circumstances would be outside the purview of the quantification of the fringe benefits for taxation. Under above facts and circumstances, we remit the matter back to the file of the Assessing Officer to examine the existence of the employer-employee relationship in this case, which is a pre-requisite for levy of fringe benefit tax and pass a detailed speaking order afresh after allowing an opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee in I.T.A. No. 846/Mds/2017 is dismissed and I.T.A. No. 847/Mds/2017 is allowed for statistical purposes.

Order pronounced on the 28th February, 2018 at Chennai.

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| Sd/- | Sd/- |
| (ABRAHAM P. GEORGE) | (DUVVURU RL REDDY) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Chennai, Dated, the 28.02.2018

Vm/-

आदेश क□ □□ितिलप अ□ेषत/Copy to: 1. अपीलाथ□/Appellant, 2.□□यथ□/Respondent, 3. आयकर आयु□त (अपील)/CIT(A), 4. आयकर आयु□त/CIT, 5. □वभागीय □□ितिनिध/DR & 6. गाड□फाईल/GF.