

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.367/Kol/2017
Assessment Year:2008-09

DCIT, Circle-6(1), P-7, Chowringhee Square, Kolkata-69	बनाम / V/s.	M/s Birla Corporation Ltd., 9/1 R.N. Mukherjee Road, Kolkata-001 [PAN No.AABCB 2075J]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumyajit Dasgupta, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri A. Dhdhwenala,
सुनवाई की तारीख/Date of Hearing	20-03-2018
घोषणा की तारीख/Date of Pronouncement	03-05-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-23, Kolkata dated 18.11.2016. Assessment was framed by DCIT, Circle-6(1), Kolkata u/s 154/154/115WE(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 31.03.2015 for assessment year 2008-09. The grounds raised by the Revenue per its appeal are as under:-

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in law as well as on facts in holding that presents given to the stockiest and dealers were sales promotion in nature and 20% of the said mount was taxable fringe benefit, ignoring the fact that presents given to the dealers and stockiest

were gift in nature and as such, 50% of such expenditure was taxable fringe benefit.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in law by not appreciating the CBDT's Circular No.8 dated 29.08.2005, vide answer to q no 7 of the said circular.

3. For that the appellant reserves the right to add to, alter or amplify the above grounds of appeal."

Shri Soumyajit Dasgupta, Ld. Departmental Representative appeared on behalf of Revenue and Shri A. Dhdhwenala, Ld. Authorized Representative appeared on behalf of Revenue.

2. Sole issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer on account of fringe benefit expenses incurred by assessee.

3. Briefly stated facts are that the assessee has incurred expenditure under the head "gift to stockiest and dealers" which were treated as sales promotion and publicity. The gifts was taxed under the FBT @ 20% in the assessment framed under section 115WE(3) dated 31.12.2010. However the AO subsequently rectified the same under section 154/115WE(3) of the Act by treating the impugned gifts for fringe benefit tax @ 50% on such expense. Accordingly, AO added the difference of 30% of gifts expense of ₹47,81,249 only to the value of fringe benefit amount offered by assessee and the amount applicable to fringe benefit tax.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by the AO by observing as under:-

"3. Order u/s. 154, grounds of appeal, submission of the ARs were duly considered. In the present case, the Assessing Officer passed the order u/s. 154/115WE(3) of IT Act mentioning that gift to stockiest and dealer to be charged at the rate of 50% instead of 20% as they are not sales promotion cases.

In the appellant's own case for the Assessment Year 2007-08, CIT-6 has treated the gift as a sales promotion expense following the Hon'ble Tribunal order ITA No.1813-Kol-2010 for the Assessment Year 2006-07 where in gifts were treated as sales promotion expenses. Following the decisions in the Assessment Year 2006-07 and 2007-08 in the assessee's own case, I also, in the present appeal treat the gift as Sales promotion expenses and direct the AO to charge FBT @ 20% instead of 50%."

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

5. Before us both parties relied on the order of Authorities Below as favourable to them so far Ld. AR for the assessee filed paper book which is running pages from 1 to 19.

6. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we find that issue in the present case of Revenue has already been decided by the Co-ordinate Bench of this Tribunal in assessee's own case in **ITA No.904/Kol/2014** dated 14.03.2017, wherein the Tribunal held as under:-

"6. We have perused the case records, analyzed the facts and circumstances and have considered the judicial pronouncements placed before us. We are inclined to analyse the legal situation first and then correlated to the facts situation in order to appreciate the issue. Section 115WB(2) of the Act specifies various expenses, which are considered to be in the nature of fringe benefits. Clause (D) of the said section treats expenditure on sales promotion including publicity as taxable Fringe Benefit and Clause (O) treats expenditure on gifts provided by the employer as taxable fringe benefit. As per section 115WC(1)(c), 20% of the expenses incurred on sales promotion including publicity are to be treated as taxable fringe benefit and as per section 115WC(1)(d) 50% of expenditure on gifts are to be treated as taxable fringe benefit. The assessee has considered the impugned amount under section.115WB(D) whereas AO has considered the same under section. 115WB(O). Keeping in view the business exigency only 20% of the expenditure incurred on sales promotion including publicity has been taken as taxable fringe benefit whereas in case of gifts which are purely given without any consideration out of one's own volition having very little business ; consideration, 50% of the expenditure on such gifts is being treated as taxable fringe benefit. The legislative intent is also clear from the fact that w.e.f 1-4-08 expenditure on distribution of samples either free of cost or at concessional rate has been excluded from sales promotion and publicity expenses and, therefore, not to be considered as taxable fringe benefit. Therefore, an expenditure, which has direct nexus with the sales promotion and publicity cannot be classified under clause(O) as gifts. In any view of the matter, under such circumstances, in case of two views, the view favourable to assessee has to be taken. We find considerable force in the submissions of the Id. counsel for the assessee. that since the articles distributed had direct nexus with the sales achieved through stockiest/dealer etc., therefore, expenditure was purely for sales promotion purposes. It was not incurred for giving the gifts, which have normally to be given without any consideration out of one's own volition Further, it is not disputed that presentation articles carried the name or logo of the assessee and, therefore, the use was for the purposes of advertisement.. Under such circumstances, the impugned expenditure is to be treated as expenditure on sales promotion including publicity and could not be classified under clause (O) treating it as gift. Further we observed that in assessee's own case in ITA NO.1813/Kol/2013, the Tribunal has taken a view regarding the CBDT Circular No.8 dated 29-8-2015 on which reliance was placed by the AO, the Circular was analysed and the observation of the' bench was that interpretation of CBDT cannot be accepted. The very premise that that the impugned expenditure is without consideration, in the humble opinion of the Bench, is wrong because the object/consideration is sales promotion. Gifts are

normally given without any consideration out of one's own volition but in the present case various items were given in terms of trade scheme depending upon sales targets achieved by stockiest! dealers. Therefore, is not correct as per the principle of law. Moreover, facts situation prevalent for the assessment year 2006-07 are identical with that of present assessment year and, therefore, we are inclined to maintain status quo followed the pronouncements given by ITAT Kolkata Bench in assessee's own case and accordingly the relief granted by ld. CIT(A) to the assessee is sustained. This ground of appeal by the revenue is dismissed."

Respectfully following the same, we find no reason to interfere with the order of Ld. CIT(A). We hold accordingly. This ground of Revenue's appeal is dismissed.

7. In the result, Revenue's appeal stands dismissed.

Order pronounced in open court on 03/05/2018

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 03/05/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-6(1), P-7, Chwringhee Sq. Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Birla Corporation Ltd., 9/1 R.N.Mukherjee Road, Kol-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता