

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES : “ E ” NEW DELHI]**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I. T. Appeal No. 3273 (Del) of 2013
Assessment Year : 2008-09.**

M/s. Hindustan Coca Cola Beverages Private Limited, 3 rd Floor, Orchid Centre, DLF Golf Course Road, Sector : 53, Gurgaon, Haryana – 122 001.	Vs.	Deputy Commissioner of Income Tax, Circle : 12 (1), New Delhi.
PAN : AABCH 1541 D		

A N D

**I. T. Appeal No. 3691 (Del) of 2013
Assessment Year : 2008-09.**

Deputy Commissioner of Income Tax, Circle : 12 (1), New Delhi.	Vs.	M/s. Hindustan Coca Cola Beverages Private Limited, 13, Abul Fazal Road, Bengali Market, New Delhi – 110 001.
		PAN : AABCH 1541 D
(Appellants)		(Respondents)

Assessee by : Shri Sachit Jolly, Adv.;

Department by : Shri Amit Jain, Sr. D. R.;

Date of Hearing : 19.03.2018;

Date of Pronouncement : 18.06.2018.

ORDER.**PER PRASHANT MAHARISHI, A.M. :**

These are the two appeals filed by the assessee and Revenue against the order of the learned Commissioner of Income Tax (Appeals)-XV, New Delhi, for assessment year 2008-09, passed on 25.03.2013 in the order passed by the Deputy. Commissioner of Income Tax, Circle : 12(1), New Delhi, under section 115WE(3) of the Income Tax Act, 1961.

2. I.T. Appeal No. 3273 (Del) of 2013 is filed by the assessee raising following grounds of appeal :-

“ 1. That the CIT (Appeals) erred on facts and in law in upholding the addition of Rs.22,53,344, being 20% of expenditure of Rs.1,12,66,722 incurred on account of conveyance, to the value of fringe benefits under section 115WC read with section 115WC(l)(c) of the Income-tax Act, 1961 (‘the Act’).

1.1 That the CIT (Appeals) erred on facts and in law in observing that there were some factual inconsistencies in the information qua details of conveyance expenses offered for FBT, filed by the appellant.

1.2 That the CIT (Appeals) erred on facts and in law in not appreciating that the expenditure of Rs.1,12,66,722 was incurred towards provision of transport facility to employees for commuting between office and

residence and/or for facilitating the re-location of employees, which was exempt from FBT under section 115WB(3) of the Act..

1.3 That the CIT (Appeals) erred on facts and in law in holding that the aforesaid expenditure incurred towards transportation of employees was not exempt under section 115WB(3) of the Act, on the ground that the agreement with the vendor was much wider than provision of vehicles to the employees for commutation between office and residence.

1.4 Without prejudice, that the CIT (Appeals) erred on facts and in law in not appreciating that since no fringe benefit in any case was provided to employees as a result of incurrance of the aforesaid expenditure towards conveyance for the purposes of business, the same was not liable to fringe benefit tax under section 115 WA of the Act.

2. That the CIT (Appeals) erred on facts and in law in upholding the addition of Rs.3,64,23,387, being 20% of Rs. 18,21,16,939 (50% of the balance expenditure of Rs.36,42,33,878) on account of expenditure incurred towards advertisement, publicity and sales promotion, to the value of fringe benefits under section 115WB read with section 115WC (l)(c) of the Act on an ad-hoc basis, purely based on surmises and conjectures.

2.1 That the CIT (Appeals) erred on facts and in law in not appreciating that the expenditure incurred towards advertisement, publicity and sales promotion was exempt from being deemed as fringe benefit, in terms of proviso to section 115WB(2)(d) of the Act.

2.2 Without prejudice, that the CIT (Appeals) erred on facts and in law in not appreciating that no fringe benefit accrued to employees from advertisement expenditure incurred by the appellant for the purposes of business to be subjected to fringe benefit tax under section 115WA of the Act.

The appellant craves leave to add to, alter, amend, or vary the above grounds of appeal at or before the time of hearing. ”

3. I.T. Appeal No. 3691 (Del) of 2013 filed by the Revenue raising the solitary ground of appeal in reduction to the addition of Rs.9,21,88,625/- to Rs.4,60,64,313/- on account of advertisement expenditure. We first take up the appeal of the Revenue and state the fact that assessee is a company, who filed its return of fringe benefit on 29.09.2008 declaring fringe benefit of Rs.11,44,78,098/-. The return of income was selected for scrutiny and same was assessed at Rs.20,88,60,047/- vide order dated 22.12.2010. Assessee challenged the same before the learned CIT (Appeals), who partly allowed the appeal of the assessee and, therefore, the Revenue and the assessee both are in appeal.

4. It was noted by the Assessing Officer that assessee has disclosed advertisement, publicity and sales promotion expenditure of Rs.16.66

crores whereas as per the profit and loss account, the sum debited by the assessee was Rs.62.73 crores. The assessee was asked to explain the same, which according to the Assessing Officer, assessee failed and hence addition of Rs.9.21 crores @ 20% was considered as fringe benefit and added to the total fringe benefit.

5. Before the learned CIT (Appeals) it was submitted that it was not possible to produce all the bills and vouchers for verification from different branches. It was further stated that Rs.46.92 crores holding that it included the conference expenses, scholarship expenses and traffic violation expenses, which were wrongly booked in that account. It was further stated that Rs.46.31 crores was wrongly included as same is exempt under the proviso to clause (d) of section 115WB(2) of the Act. The learned CIT (Appeals) held that assessee could not produce the bills of Rs.9.02 crores, but only sample bills were produced, hence, he disallowed 50% thereof and accordingly held it as taxable.

6. The learned authorized representative submitted that before the learned CIT (Appeals) the assessee has submitted an application under Rule 46A for admission of additional evidences. Assessee

submitted a copy of the sample bills of the service providers and the advertising agency that such expenditure is exempt from FBT. He further relied upon the decision of the Co-ordinate Bench in the case of T.V. Today Network Ltd. Vs. DCIT (2013) 38 taxmann.com 409. He further stated that assessee has submitted the complete break-up and amount of Rs.50,16,172/- was already offered for FBT under the category of conference and further an amount of Rs.1.52 lakhs under the category of scholarship. He, therefore, submitted that learned CIT (Appeals) has wrongly upheld the disallowance to that extent. With respect to the appeal of the Revenue, wherein vide ground No. 1, it is contesting the disallowance deleted by the learned CIT (Appeals), he submitted that no FBT is chargeable on other sums.

7. The learned Departmental Representative relied upon the order of the learned Assessing Officer and the learned CIT (Appeals) to the extent of the addition of the fringe benefit.

8. We have carefully considered the rival contentions. With respect to the total expenditure of Rs.46.92 crores the assessee has given a detailed break-up which shows that these expenditure are not

chargeable to tax of fringe benefit. The complete chart is placed at page Nos. 3 and 4 of the paper book. According to that chart most of the expenditure are advertisements, banners, newspapers, printed materials etc. on which FBT is not chargeable. The assessee has himself stated that conference charges have already been considered in return of FBT including dealers' conference expenses. Further the scholarship was also offered for taxation. As per the page Nos. 3 and 4 of the paper book, the learned Departmental Representative could not controvert that how the decision of the CIT (Appeals) in deleting the addition partly was erroneous. Further Co-ordinate Bench has held that Fringe Benefit Tax is not leviable on channel placement charges paid to cable operators by T.V. Channel Companies. Therefore, respectfully following the decision of the Co-ordinate Bench, we also hold that addition upheld by the learned CIT (Appeals) deserves to be deleted. Though assessee has submitted the sample invoices, but they show that on these expenditure, fringe benefit tax is not chargeable. In view of this, we dismiss ground No. 1 of the appeal of the Revenue and allow ground No. 2 of the appeal of the assessee.

9. Now coming to the appeal of the assessee vide ground No. 1 the assessee has challenged the addition of Rs.22,53,344/- being 20%

of the expenditure of Rs.1.12 crores towards provision of transport facilities to employees for commuting between the office and residence or for facilitating the relocation of its employees. The learned Assessing Officer noted that assessee has shown travelling and conveyance expenditure for FBT at Rs.42.74 crores whereas in the profit and loss account it has debited Rs.43.87 crores. Therefore, on the difference of Rs.1.12 crores, he computed the fringe benefit of 20% and made the addition.

10. Before the learned CIT (Appeals) it was submitted that assessee has contract with M/s. Varun Voyages for transport of employees from their residence to work place. The learned CIT (Appeals) noted that the agreement of M/s. Varun Voyages was wider than only providing vehicles to the staff for the purpose of transport from office to residence. He further held that the appellant has not furnished the complete invoices and, therefore, he upheld the addition.

11. Before us the learned authorized representative submitted the similar argument. He further referred to the submission made before the learned CIT (Appeals).

12. The learned Departmental Representative supported the orders of the lower authorities.

13. We have carefully considered the rival contentions and perused the orders of the lower authorities. The amount of travelling and conveyance expenditure included some of the bills of the service provider in respect of bus and vehicles hiring by it for transport of its employees from their residence to the place of the work. The above expenditure is with respect to the free transportation facilities provided to its employees. The assessee has submitted the detail charts starting from page No. 19 to page No. 24 of the paper book. The expenditure are with respect to the monthly bus hire charges and tempo travel charges. It also included the many bus hire charges at respective locations. However, at its Gurgaon office it has debited a sum of Rs.40 lakhs paid to M/s. Varun Voyages. The copy of the agreement with M/s. Varun Voyages are claimed by the Revenue authorities that it does not only include the transportation of the staff, but to other members also. The learned CIT (Appeals) has also noted that the assessee has not furnished the complete information with respect to the above payment. It is apparent that assessee has

not shown how Rs.40 lakhs paid to M/s. Varun Voyages are utilized. No evidences such as log book or any other material, to show that whole amount has been spent on transportation expenses of staff only. The assessee failed concurrently at lower authorities to submit that detail. Even before us. It is also not denied by the assessee that these facilities are not used by the other persons than the staff or for the staff other than the transport from residence to office. Therefore, in absence of any details forth-coming from assessee, we do not have any option but to make a fair estimate. We also take into consideration that assessee has used buses, mini-buses, tempos for transportation of staff. In view of this, we hold that 50% of the expenditure of Rs.40 lakhs may be considered as tours and travel expenditure and 20% thereof may be retained as the fringe benefit in the hands of the assessee. In view of the above facts, we restrict the amount of Rs.1.12. crores to Rs.20 lakhs and 20% thereof i.e. Rs.4 lakhs is the correct value of fringe benefit under section 115WC of the Act. Accordingly appellant gets relief on this ground of Rs.18,53,344/- and accordingly ground No. 1 of the appeal is partly allowed.

14. In view of the above finding, the appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

The order is pronounced in the Open Court on : **18th June, 2018.**

**Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : the **18.06.2018.**

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Copy of the Order forwarded to :-

1. Appellants;
2. Respondents;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

//True Copy//

BY ORDER

ASSISTANT REGISTRAR

	Date
Date of dictation	13.06.2018
Date on which the typed draft is placed before the dictating Member.	18.06.2018

Date on which the typed draft is placed before the Other Member.	18.06.2018
Date on which the approved draft comes to the Sr. P.S. /P.S.	18.06.2018
Date on which the fair order is placed before the Dictating Member for pronouncement.	18.06.2018
Date on which the fair order comes back to the Sr. P.S. / P.S.	19.06.2018
Date on which the final order is uploaded on the website of ITAT.	19.06.2018
Date on which the file goes to the Bench Clerk.	19.06.2018
Date on which the file goes to the Head Clerk.	
The date on which the file goes to the A.R. for signature on the order.	
Date of dispatch of the Order.	

