

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD - BENCH 'C'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.2717/Ahd/2013**

**निर्धारण वर्ष/Asstt. Year: 2009-2010**

Gujarat Energy Transmission Corpn. Ltd. Sardar Patel Vidyut Bhavan Race Course Circle Baroda 390 007. PAN : AABCG 4029 R	Vs.	DCIT, Cir.1(1) Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri M.K. Patel, Ar
Revenue by :	Shri Prasoon Kabra, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/06/2018

घोषणा की तारीख/Date of Pronouncement: 27/06/2018

**आदेश/ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-I, Baroda dated 18.9.2013 passed for the assessment year 2009-10.

2. The grounds of appeal taken by the assessee reads as under:

1. The learned Commissioner of Income Tax (Appeals) has erred in law and facts in Confirming the total value of Fringe Benefits at Rs.4,04,68,953/- as against the Returned Fringe Benefits of Rs.Nil offered by the appellant.

2. *The learned Commissioner of Income Tax (Appeals) has erred in law and facts in charging interest under section 115WJ of the Income Tax Act, 1961 on the assessed tax liability.*
3. *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the initiation of penalty proceedings under section 271(l)(d) of the Income Tax Act, 1961 for the alleged concealment and/or furnishing of inaccurate particulars of income.*
4. *The appellant craves leave to add to, alter, delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal."*

3. The Id.counsel for the assessee at the very outset submitted that this issue has been decided against the assessee by the ITAT in one of its concern viz. Gujarat Urja Vikas Nigam Ltd. in ITA No.2265 and 2266/Ahd/2010 for the assessment years 2006-07 and 2007-08. He placed on record copy of Tribunal's order.

4. With the assistance of the Id.representatives, we have gone through the record carefully. Though in the return of income the assessee has declared NIL fringe benefit, but on perusal of the audit report, it revealed to the AO that auditors have reported value of fringe benefit at Rs.4,04,68,953/-. The AO recorded a finding that in view of the auditors' report, it could not be held that the assessee has not expended any fringe benefit. Therefore, he made addition and levied fringe benefit tax. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

5. The Id.CIT(A) while confirming the disallowance made reference to the order of his predecessor in the case of Gujarat Urja Vikas Nigam Ltd. and recorded the following finding:

*"4.7 It is seen that the statutory auditors of the assessee, in the tax audit report filed u/s44AB have themselves quantified the value of fringe benefits taking into account the items at (A) to (P) mentioned in section 115WB(2). It is pertinent to note that all the expenditure has been incurred on the employees of the assessee. Admittedly, no part of the expenditure in question has been incurred on non-employees. Moreover, the assessee has itself deposited the FBI into government treasury and not in an escrow*

*account with a scheduled bank. Thus, the appellant appears to have considered itself to be part of category (1) as held by the High Court i.e., an assessee who was fully covered by the provisions. Having regard to the totality of the circumstances, I am of the opinion that the assessee was liable to FBT. The action of the AO in this regard is accordingly confirmed. Further, the AO has merely accepted the valuation of taxable fringe benefits as worked out by the assessee itself. Hence valuation for the fringe benefits at Rs.27,07,177/- is also confirmed. This ground thus fails.*

*5. Ground no.3 relates to the charging of interest u/s.115WJ. This ground is consequential. The AO is directed to charge interest u/s.115WJ, if any, after giving effect to this order."*

*10.1 Since the facts and circumstances of the case of AY 2007-08 of the above case of Gujarat Urja Vikas Nigam Ltd. are identical to the facts and circumstances of case of appellant for the year under consideration i.e. for AY 2009-10 and therefore following the above decision of my predecessor i.e. Id.CIT(A)-I, Baroda it is held that the appellant was liable to fringe benefit tax. In view of this action of the AO in this regard is accordingly confirmed. The AO has merely accepted the valuation of taxable fringe benefits tax as worked out by the appellant itself and therefore valuation of fringe benefit at Rs.4,04,68,953/- is confirmed. Thus, the above two grounds of appeal of the appellant are dismissed."*

6. Considering the stand of the Id.counsel for the assessee and order of the ITAT passed in the case of Gujarat Urja Vikas Nigam Ltd. (supra), we are of the view that the Id.CIT(A) has rightly confirmed the value of fringe benefit expended by the assessee for the purpose of levy of FBT. The Id.counsel himself admitted that there is no merit in this appeal. Therefore, it is dismissed.

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 27<sup>th</sup> June, 2018 at Ahmedabad.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER  
Ahmedabad;

Dated 27/06/2018

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER