

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6457/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2006-07)

ACIT, Cir-7(2)(2) Room No.623, 6 th Floor Aayakar Bhavan, M.K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. National Stock Exchange of India Ltd. C-1, Block-G, Exchange Plaza Bandra Kurla Complex, Bandra East, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN1797L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Suman Kumar (DR)	
Assessee by:	Shri Arvind Sonde	

सुनवाई की तारीख / Date of Hearing: 12.07.2018
घोषणा की तारीख /Date of Pronouncement: 03.10.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 30.08.2016 passed by the Commissioner of Income Tax (Appeals)-13, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the AY. 2006-07.

2. The revenue has raised the following grounds: -

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting addition of expenses of Rs.77,38 lakhs after recording

adequacy of supporting material on the basis of narration in ledger accounts and certain sample vouchers whereas the AO specifically pointed out discrepancies in these supporting.”

3. The brief facts of the case are that the assessee filed its return of income u/s 115WD(1) on 02.11.2006 declaring the value of fringe benefit at Rs.4,27,24,292/-. Notice u/s 115WE(2) was issued and served upon the assessee as per the proviso to that Section on 17.11.2007. Thereafter, the another notice u/s 115WE(2) was also issued. On verification, certain items which have ingredient of fringe benefit were found to be not explicitly explained for exclusion from the value of taxable fringe benefits, therefore, the notice was given and the taxable fringe benefit was considered and detail of which is hereby mentioned below.:-

S. No.	Head of account of the P & L Account	Total amount	Amount considered for the purpose of FBT under different heads	Difference Rs. In lacs
1	Employees welfare expenses	78.58	50.90	27.68
2	Investor Education expenses	11.47	10.90	0.57
3	Other expenses	271.18	40.90	237.09
4	Advertisement & Publicity	20.42	7.97	12.45
5	Repairs & maintenance (Others)	142.24	2.83	139.41
6	Contribution to PF & other funds	126.28	35.55	90.73
7	Salary & allowances (Med.reimb. & driver's salary	1849.33	27.36	1821.97

Thereafter, the amount to the tune of Rs.77.38 was added to the value of fringe benefit and the total fringe benefit value of the assessee was assessed to the tune of Rs.4,27,24,292/- + 77,38,000/- total to the tune of Rs.5,04,62,292/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, Revenue has filed the present appeal before us.

ISSUE No. 1:-

4. Under this issue the revenue has challenged the deletion of the further addition of fringe benefit value of Rs.77,38,000/-. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.:-

“5. I have carefully considered the AO order, the additional evidence filed by the appellant, the remand report of the AO as well as the AR submissions. The appellant in this case is a stock exchange which facilitates trading in all types of securities. While the AO had called for certain details and had passed an exparte order on non-receipt of these details the appellant was under the impression that it had filed all the details which could be filed immediately and that there was no compliance outstanding. The additional evidence filed during the appellate proceedings was forwarded to the AO who in her remand report has not objected to its admission. It was accordingly admitted. While finalizing his order under section 115WF of the Act, the AO had noticed that the taxable fringe benefit value had not been declared properly by the appellant. Towards that end he had tabulated the difference between the total expenditure and the amount considered for FBT under various heads which is reproduced herewith once again for the sake of easy understanding. He had then applied the statutory rates of FBT and worked out the total disallowance of Rs.77.38 lakhs as under.

Sr. No.	Head of account of the profit and loss account	Total amount	Amount considered for the purpose of FBT under different heads	Difference in lakhs	Rate of percentage	Amount considered for FBT by the AO additionally
1	Employee welfare expenses	78.58	50.90	27.68	20	5.54
2	Investor education expenses	11.47	10.90	0.57	20	0.12
3	Other expenses	271.18	40.90	237.09	50	11.85
	Head of account of the profit and loss account	Total amount	Amount considered for the purpose of FBT under different heads	Difference in lakhs	Rate of percentage	Amount considered for FBT by the AO additionally
5	Advertisement and publicity	20.42	7.97	12.45	20	2.49
6	Repairs and maintenance (Others)	142.24	2.83	139.41	20	2.79
7	Contribution to PF and other funds	126.28	35.55	90.73	20	18.15
8	Salary and allowances (medical reimbursement and drivers salary)	1849.33	27.36	1821.97	20	36.44
		2499.5	176.41	2323.09		77.38

5.1 From the chart in the preceding sub-paragraph it would become clear that the AO had considered seven heads of account in the Profit and Loss account. Out of the total amount spent on these seven heads, certain amount had already been declared and taken as such for the purpose of FBI by the appellant. The

difference between the total amount spent under the seven heads and the amount declared for the purpose of FBI has been sought to be added back by way of value of FBI not already declared, after applying the statutory percentage for the various heads. The AO has worked out the disallowance at Rs.77.38 lakhs as given in the last column in the chart in the preceding sub-paragraph. The short point for consideration in this appeal is whether or not this amount of Rs.77.38 laKhs was worthy of adoption as fringe benefit value which had escaped taxation. On his part, the AR has filed three separate items The first is the detailed statement of reconciliation of FBT with bifurcation of expenses liable to FBT as well as those which were not liable. The second is the detailed ledger account of all the expenses as above. The third is the sample invoices for all the seven types of expenses as detailed in the earlier chart. When the above material was forwarded to the AO for consideration as additional evidence, she has stated that there appears to be no proof of the purpose for which the expenses had been incurred. Before me, the AR stated that the AO has not taken into account the detailed ledger account where the narration of the expenses was given. Further, she had not examined the sample vouchers which had been submitted. She had also not called for any particular additional vouchers which she would have liked to examine. On his part the AR had not submitted copies of all the vouchers as they literally ran into lakhs of items.

5.2 I have noticed that the AO has commented on only two substantive items. Coming to the employee welfare expenses, the expenses under the sub-head 'pantry and refreshment expenses' amounted to Rs.37.69 lakhs. Out of this, an amount of Rs.10.30 lakhs was shown to have been subjected to FBI voluntarily by the appellant while the balance of Rs.27.59 lakhs was stated to be not liable for FBT The AO had examined this matter along with the ledger and the sample vouchers but had not found the information sufficient to prove whether it was for the purpose oi refreshment for staff at the work place (which would result in its exclusion from the ambit of FBI) I have gone through the documentation related to this particular sub-head carefully. Both the ledger account as well as the vouchers clearly substantiate whether the food had been provided at the office premises of the appellant or had been provided elsewhere. Accordingly, contrary to the AO's understanding I find the information sufficient to prove if the pantry and refreshment expenses had been incurred for the

purpose of the refreshment of staff at the work place or otherwise. Coming to the second sub-head on which the AO has commented viz. 'other expenses', she has noted that a florist's bill had been attached and a ledger account for the same had been submitted. According to the AO it was only an assumption and not an assertion that the said expense was not liable for FBT. I have examined the ledger account as well as the voucher for the flowers. The narration in the voucher does clarify that the bill had been raised for the delivery of flower pots to the office of the appellant on specified days of the week for specified months, the number of pots and the cost per pot too having been specified. In these circumstances, I am in agreement that the AR's proposition that the information was sufficient to prove whether or not the said expense could be charged to FBT, I am also not in agreement with the AO's conclusion that the nature of all the expenses was such that those liable to FBT could not be ascertained, in the case of 'employee welfare expense', the appellant had classified those expenses under four sub-heads viz. staff welfare, 'pantry and refreshment', seminar expenses and lastly family floater policy account. The entire staff welfare expenses of Rs.23.49 lakhs as also the entire family floater policy account expenses of Rs.17.03 lakhs had been subjected to FBT. Under the sub-head 'pantry and refreshment', the total expenditure was Rs.37.89 lakhs, while the amount subjected to FBT was Rs.10.3 lakhs, the balance amount not subjected to FBT being Rs.27.59 lakhs. Out of the said amount of Rs.7.59 lakhs, Rs.27.04 lakhs of refreshment expenses had been stated to have been excluded on account of having been provided to the staff at the work place. Similarly, an amount of Rs.0.19 lakh had been specifically excluded being refreshment provided at the time of workplace meetings of the staff. While the ledger account of both the amounts of Rs.27.4 lakhs and Rs.0.19 lakh as above are available, sample vouchers of the same have also been provided by way of a compilation. On this basis, I find that there is adequate clarity about the nature of these expenses and the reason for their exclusion from the purview of FBT. Coming to the investor education expenses, out of the total expenditure of Rs.246.3 lakhs, Rs.10.9 lakhs had been subjected to FBT by the appellant. The balance amount of Rs.234.4 lakhs had been excluded. The party-wise details of such exclusion have been given in an annexure to the reconciliation statement for instance, amounts of Rs.0.69 lakh and Rs.0.32 lakh had been paid to M/s Geojit Finance Services

Limited and to the Institute of Company Secretaries of India for an investor awareness campaign in Kerala and for investor awareness seminars respectively. I once more find That the reconciliation, its enclosure, the ledger account and the sample vouchers clearly indicate the purpose for which the expenditure had been incurred as also the basis for excluding the same from the purview of the FBT. Coming to the third sub-head viz. 'other expenses', the appellant had subjected to FBT a total amount of Rs.40.17 lakhs and excluded an amount of Rs.231.01 lakhs out of the total expenditure of T 271.18 lakhs. There are cases of outright exclusion, for example application fees paid to MMRDA (Mumbai Metropolitan Region Development Authority) or of outright inclusion, for example Diwali expenses. There are also several sub-heads where there has been partial exclusion and partial inclusion of the expenses insofar as the FBT is concerned. For instance, insofar as shifting expenses are concerned, while FBT has been part on expenses of Rs. 0.16 lakh which were paid outright to the staff members, shifting expenses of T 0.53 lakh paid on account of shifting of goods from one office to another have been excluded from the purview of FBT Notably the entire expenditure on meetings and conferences, holiday homes, expenses, club expenses, research scholarships and business promotion expenses has been subjected to FBT. I find similar detailed explanations given by way of the reconciliation statement, the enclosure thereto, the ledger accounts and the sample vouchers when it comes to the balance sub-heads of advertisement & publicity, repairs & maintenance, contribution to PF & other funds and lastly salaries & allowances. In these circumstances, I hold that the treatment accorded to certain expenses by subjecting them to FBT, while excluding the balance therefrom as done by the appellant has been done with adequate basis and transparency.

5.3 Before me, the ARs have further pointed out an error in the AO's computation viz. the incorrect adoption of the value of fringe benefits as per the appellant's return which too has led to an increase in the demand raised. While the said amount has been taken by the AO to be Rs.427.24 lakhs, before me The AR has filed a copy of the e-filed return of FBT wherein the value of fringe benefits had been shown to be Rs.116.78 lakhs. The AR explained that the amount of Rs.427,29 lakhs as adopted by the AO was the total of all the debits appearing in The appellant's Profit and Loss account. In other words, it would appear that the AO has

inadvertently substituted the value of fringe benefits by the amount of the total expenditure. The AO is directed to verify these figures from his own record and adopt the correct value of fringe benefits as returned by the appellant,

5.4 Coming to the grounds of appeal, ground nos. 1, 3 and 4 are seen to deal with the addition of ? 77,38 lakhs made by the AO to the value of the fringe benefits. As already decided earlier there was no basis for making this addition, the appellant having transparently offered adequate basis to exclude certain amounts from the value of fringe benefits. Ground nos. 1, 3 and 4 are accordingly allowed. Vide ground no. 2, the appellant had agitated against the incorrect adoption of the returned value of fringe benefits at 427.2 lakhs in lieu of Rs.116.78 lakhs as returned. The AO is directed to adopt the correct value of fringe benefits returned on the basis of the appellant's return available in its records. To this extent, ground no. 2 is taken to have been allowed."

5.5 To recapitulate, all the four grounds of appeal are allowed"

5. On appraisal of the above mentioned finding, we noticed that the AO raised the addition on account of expectable fringe benefit to the tune of Rs.77,38,000/-, specifically, on the reasons that the assessee failed to furnish the evidence in support of its claim. In appeal, before the CIT(A), the assessee moved an application of additional evidence and the CIT(A) called the remand report to which the AO nowhere objected the admission. The case of the assessee was examined by the CIT(A) on the basis of the additional evidence and remand report and the account of the assessee. Each and every detail was given and the reasons have been given for non-inclusion of amounting in question in the figure of taxable fringe benefit of tax. At the time of argument, the revenue did not point out any specific

detail/reasons which was wrongly considered by the CIT(A). Since no distinguishable material has been produced before us to be interfere with the finding of the CIT(A), therefore, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage.

7. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 03.10 .2018.

Sd/-

(R. C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 03.10 .2018.

Vijay

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai