

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5956/Del/2016 : Asstt. Year : 2007-08

ITA No. 5957/Del/2016 : Asstt. Year : 2008-09

ITA No. 5958/Del/2016 : Asstt. Year : 2009-10

Whirlpool of India Ltd., Plot No. 40, Whirlpool House, Sector-44, Gurgaon-122002, Haryana	Vs	Asstt. Commissioner of Income Tax, Circle-1, LTU, Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACW1336L		

Assessee by : Sh. Tapas Mishra, Adv.

Revenue by : Sh. N. K. Bansal, Sr. DR

Date of Hearing: 29.08.2019

Date of Pronouncement: 17.10.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-22, New Delhi dated 01.09.2016.

2. Since, the issues involved in all these appeals are common, they were heard together and are being disposed off by common order.

3. In ITA No. 5956/Del/2016, following grounds have been raised by the revenue:

"1. That on the facts and in the circumstances of the case, the impugned order of Commissioner of Income-tax(A)-22, New Delhi, (hereinafter referred to as 'CIT(A)') dismissing the appeal of the Appellant and

confirming the order dated 30.09.2015 passed by the Ld. Assessing Officer (hereinafter referred to as 'the Ld. AO') u/s 115WE(3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), is clearly contrary to the binding decision of the Hon'ble Tribunal, bad in law and void ab initio.

2. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in holding that the order under section 254(2) of the Act dated 06.01.2016 passed by the Hon'ble Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') is applicable only to the assessment year 2007-08 and not to the assessment years 2008-09 and 2009-10, even though the original order which was to be rectified was a consolidated order for all the three years.

3. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in exceeding jurisdiction by acting contrary to section 254(4) of the Act, and in re- adjudicating the Appellant's claim on merits to reach a conclusion contrary to the decision of the Hon'ble Tribunal in the very same case.

4. That on the facts and in the circumstances of the case, the CIT(A) erred on facts and in law in holding that the decision of Hon'ble High Court of Delhi in the case of T&T Motors Ltd. vs. ACIT (2012) 247 CTR (Delhi) 384, was not applicable to the facts of the Appellant's case even though the Hon'ble Tribunal had categorically found that the said decision squarely covered the Appellant's case."

4. Facts as per record are as under:

- In ITA No. 2006/Del/2011 for assessment year 2007-08, the assessee at point no. 2 raised the following grounds:

"2. That on facts and circumstances of the case, the CIT(A) erred on facts and in law in confirming the Fringe Benefit Tax (FBT) assessment order on the ground that appellant had not made a claim by

revising the return and hence the Assessing Officer had rightly rejected the appellant's claim."

- Thus, the grounds involve addition made on merits as well as not allowed by the revenue as the assessee has not made the claim by revising the return.
- The ITAT vide a common order for the assessment years 2007-08, 2008-09 and 2009-10 taking the grounds for the A.Y. 2007-08 as lead case held that the discounts and rebate are not liable to FBT and found it just and proper that a claim for deduction of the assessee is allowable (para 13 of the ITAT order). This settles the issue on merits.
- Further, the ITAT also held that the claim cannot be denied merely on technical grounds in the absence of revised return. Hence, ITAT found it appropriate that the "claim of deduction" requires examination at the end of the Assessing Officer and referred the matter to the file of Assessing Officer to examine and verify the claim.
- While directing so, the ITAT held that "with these directions, entire controversy and all issues are restored to the file of Assessing Officer".
- Later, the assessee filed a Miscellaneous Application, as a result of which the above sentence was modified which reads "with these directions the entire controversy is restored to the file of the Assessing Officer", thus, omitting the words "and all issues".
- From the above, we hold that the ITAT has adjudicated on two issues, namely

- a) the restoration of the issue pertains to examination of the FBT claim which was hither to not filed with the return of the income.
- b) On merits, the issue of claim of the assessee regarding the discounts and rebate, it was adjudicated to the effect that the claim for deduction is allowable for all years.

5. During the hearing before us, the assessee aggrieved with the re-examination of the issue on merits of allowability of expenses in FBT return argued that the Tribunal never intended to refer the matter to adjudicate on merits as the issue of allowability stands allowable vide para no. 13 of the ITAT order.

6. The Id. DR relied on the order of the Id. CIT (A).

7. Heard the arguments of both the parties and perused the material available on record. We find that the ITAT vide order dated 17.04.2014, after examining the Circular No. 8 of 2005 dated 28.09.2005 of the CBDT and the judgment of Hon'ble Jurisdictional High Court in the case of T&T Motors Ltd. Vs ACIT has unequivocal held that the expenses are allowable. The relevant portion of the order is as under:

"Therefore, respectfully following the decision of Hon'ble Jurisdictional High Court of Delhi in the case of T&T Motors Ltd. Vs ACIT (supra), we hold that as per CBDT Circular No. 8 of 2005 dated 28.9.2005, question no. 60 clarifies that discount or rebates are not liable to FBT and present case of the assessee falls within four corners of above decision of Hon'ble Delhi High Court in the case of T&T Motors Vs ACIT (supra) and CBDT Circular No. 8 of 2005. Therefore, we find it just and proper that the claim for deduction of the assessee is allowable."

8. Hence, we hereby hold that the action of the revenue on re-examination of the settled and adjudicated matter cannot be held to be valid in the eyes of law.

9. In the result, all the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 17/10/2019.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 17/10/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR