

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री इंटर्री रामा राव, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Inturi Rama Rao, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A. No. 2427/Chny/2014  
निर्धारण वर्ष/Assessment Year: 2008-09

M/s. Hanon Automotive Systems India Private Limited [Formerly known as Visteon Automotive Systems India Private Limited], Keelakaranai Village, Melrosapuram Post, Maraimalai Nagar, Chengalpattu Dt., Tamil Nadu 603 204. **[PAN:AAACM6890R ]**

Vs. The Additional Commissioner of Income Tax, Company Range III, Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri N.V. Balaji, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT  
सुनवाई की तारीख/ Date of hearing : 05.12.2019  
घोषणा की तारीख /Date of Pronouncement : 31.12.2019

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) III, Chennai, dated 30.06.2014 for the assessment year 2008-09. The assessee has challenged the levy of Fringe Benefit Tax on the conveyance expenses amounting to ₹.3,81,82,619/-.

2. At the outset, the Id. Counsel for the assessee has submitted that out of total expenses of ₹.4,50,37,340/-, a sum of ₹.3,81,82,619/- pertains

towards expenses incurred for pick up and drop facility provided to employees from residence to office and the same is not liable for FBT as per answer to question 104 of the Circular 8/2005 dated 29.08.2005. However, the assessee has inadvertently discharged excess fringe benefit tax to the extent of ₹.25,95,654/- during the assessment year 2008-09 under section 115WB(2)(F) of the Income Tax Act, 1961 ["Act" in short]. It was further submission that the Assessing Officer is duty bound to compute FBT liability in a fair and just manner taking into consideration of the Circular No. 14 (XL-35) besides relying on the decision in the case of CIT v. Simon Carves Ltd. 105 ITR 212 (SC).

3. On the other hand, the Id. DR fairly conceded the submissions of the Id. Counsel and pleaded that the issue may be remitted back to the file of the Assessing Officer for verification.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. During the course of assessment proceedings, the assessee company made a claim before the Assessing Officer that the assessee has discharged excess fringe benefit tax and based on the same, it was requested to grant refund to the extent of ₹.25,95,654/-. However, the Assessing Officer failed to consider the submissions of the assessee. By filing ledger copy of the conveyance

expenses account, the Id. Counsel for the assessee has prayed for grant of refund of the excess amount paid towards fringe benefit tax. Non consideration of the claim of the assessee is against the CBDT directions issued in Circular No. 14(XL) – 35). Moreover, in the case of CIT v. Simon Carves Ltd. (supra), the Hon'ble Supreme Court has observed as under:

*“The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered, they must also at the same time not to act in a manner as might indicate that scales are weighted against the assessee.”*

5. Now, it has to be decided as to whether the claim of the assessee that the expenses incurred for pick up and drop facility provided to employees from residence to office is an allowable expenses or not. Vide Finance Act, 2005, under Explanatory Notes on the provisions relating to Fringe Benefit Tax against the question No. 104, the CBDT has answered as under:

*“Whether expenditure incurred by the employer for the purposes of providing free or subsidized transport for journeys to employees from their residence to the place of work or such place of work to the place of residence would attract FBT ?*

*104. The free or subsidized transport provided to employees for journeys from their residence to the place of work or such place of work to the place of residence is in lieu of conveyance/transportation allowance, which is not liable to FBT. Accordingly, the expenditure incurred by the employer for the purposes of providing free or subsidized transport for journeys to employees from their residence to the place of work or such place of work to the place of residence will not be liable to FBT.”*

6. In view of the above, the Assessing Officer is directed to verify and allow the claim of the assessee, if found correct, in view of the Finance Act, 2005 notified by the CBDT. Thus, the ground raised by the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 31<sup>st</sup> December, 2019 in Chennai.

Sd/-  
(INTURI RAMA RAO)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, 31.12.2019

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.