

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President
& Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 1702/KOL/2016
Assessment Year: 2008-2009**

M/s. Nicco Corporation Limited,.....Appellant
Nicco House,
2, Hare Street, Kolkata-700 001
[PAN: AABCN0570G]
-Vs.-

Deputy Commissioner of Income Tax,.....Respondent
Circle-3, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:
No one, for the Appellant
Shri Dhrubojyoti Roy, JCIT, for the Respondent

Date of concluding the hearing : January 23, 2020
Date of pronouncing the order : March 18, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-1, Kolkata dated 23.06.2016 and the grounds raised by the assessee therein read as under:-

- “(1) Your appellant prays for relief against unlawful determination of Fringe Benefit Tax on travelling Rs.25,50,594/- u/s. 115WE(3).*
- (2) The Assessing Officer was erred in law by allocating travelling expenses of Rs.579.86 lakhs- 70% to tour & travels and 30% to conveyance charges.*
- (3) By allocating the same, AO assessed fringe benefit on travelling Rs.55,08,670/-.*

(4) Nicco Corporation Limited computed fringe benefit Rs.132.02 lakhs and paid FBT Rs.45.32 lakhs, which included travelling foreign Rs.29.40 lakhs.

(5) Assessing Officer was erred in ignoring computation sheet of fringe benefit prepared by Nicco Corporation Ltd.”.

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of electric cables, conductors and wires galvanize steel tapes etc. The return of income for the year under consideration was filed by it on 09.01.2009 disclosing total fringe benefit value at Rs.1,32,01,699/-. During the course of assessment proceedings, the assessee-company was required by the Assessing Officer to furnish item-wise calculation chart of fringe benefit value, which was generally available with the Tax Audit Report. The assessee, however, failed to furnish the same. From the perusal of the details of fringe benefit value, the Assessing Officer noticed that the assessee had claimed a total expenditure of Rs.579.86 lakhs under the head “travelling and conveyance”, but there was nothing disclosed under the said heads in the fringe benefit value as declared by the assessee. He, therefore, asked the assessee-company to offer its explanation in the matter, which the assessee-company failed to do. The Assessing Officer, therefore, attributed the expenditure of Rs.579.86 lakhs claimed by the assessee to conveyance expenses to the extent of 30% and the balance 70% to tour and travelling. Accordingly he estimated the conveyance expenses at Rs.1,73,95,800/- and tour and travelling expenses at Rs.4,05,90,200/- and adopted the fringe benefit value under the head “conveyance” at 20% being Rs.34,79,160/- and under the head “tour and travelling expenses” at 5% being Rs.20,29,510/- and made an addition to that extent to the fringe benefit value as declared by the assessee in the assessment completed under section 115WE(3) of the Act vide an order dated 31.12.2010.

3. Against the order passed by the Assessing Officer under section 115WE(3) of the Act, an appeal was preferred by the assessee before the

ld. CIT(Appeals) challenging the additions made by the Assessing Officer to the fringe benefit value under the head “conveyance” and “tour and travelling”. During the course of appellate proceedings before the ld. CIT(Appeals), the details of travelling and conveyance expenses amounting to Rs.579.86 lakhs were furnished by the assessee and it was contended that the said expenses incurred by the assesee-company did not accrue any fringe benefit directly or deeminglly to any person. This contention raised on behalf of the assesee-company was not found acceptable by the ld. CIT(Appeals) in the absence of any supporting vouches or documentary evidence produced by the assessee to support and substantiate the same. He accordingly proceeded to confirm both the additions made by the Assessing Officer to the fringe benefit value under the head “conveyance” and “tour and travelling”. Aggrieved by the order of the ld. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing before the Tribunal, none has appeared on behalf of the assessee-company. There was a similar non-compliance on the part of the assessee-company when this appeal was fixed for hearing before the Tribunal on earlier occasions. This appeal of the assessee is, therefore, being disposed of ex-parte after hearing the arguments of the ld. D.R. and perusing the relevant material available on record. It is observed that the relevant details of the expenses of Rs.579.86 lakhs claimed under the head travelling and conveyance were duly furnished by the assessee during the course of appellate proceedings before the ld. CIT(Appeals) to show that the said expenses did not accrue any fringe benefit directly or deeminglly to any person. The ld. CIT(Appeals), however, did not accept this claim of the assessee on the ground that any supporting voucher or documentary evidence to support and substantiate the said claim was not produced by the assessee-company. It appears that the ld. CIT(Appeals), however, did not give any opportunity to the assessee to produce the relevant supporting evidence to substantiate its

claim and rejected the claim of the assessee without giving such opportunity. There is thus a violation of principle of natural justice by the Id. CIT(Appeals) and keeping in view the same, we consider it fair and just to set aside the impugned order passed by the Id. CIT(Appeals) confirming the additions made by the Assessing Officer to the fringe benefit value and restore the matter to the file of the Assessing Officer for deciding the same afresh after giving an opportunity to the assessee to produce the relevant supporting evidence to support and substantiate its claim that the expenses incurred on travelling and conveyance did not accrue any fringe benefit directly or deeming to any person.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on March 18, 2020.

Sd/- (A.T. Varkey) Judicial Member	Sd/- (P.M. Jagtap) Vice-President)
Kolkata, the 18th day of March, 2020	

- Copies to :
- (1) **M/s. Nicco Corporation Limited,**
Nicco House,
2, Hare Street, Kolkata-700 001
 - (2) **Deputy Commissioner of Income Tax,**
Circle-3, Kolkata,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata-700069
 - (3) **Commissioner of Income Tax (Appeals)-1, Kolkata;**
 - (4) **Commissioner of Income Tax- , Kolkata**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.