

**IN THE INCOME TAX APPELLATE TRIBUNAL
(Delhi Bench "D", NEW DELHI)**

(Through Video Conferencing)

BEFORE

**SHRI AMIT SHUKLA, JUDICIAL MEMBER
and
Dr. B.R.R. KUMAR , ACCOUNTANT MEMBER**

**ITA No. 110/Del./2010, A.Y. : 2006-07
ITA No. 1407/Del./2011, A.Y. : 2007-08
ITA No. 2342/ Del./2014, A.Y. :2007-08
ITA No. 204/ Del./ 2012, A.Y. :2006-07**

M/s. Jindal Steel & Power Ltd. Jindal Centre, 12, Bhikaiji Cama Place New Delhi	Vs	Assistant Commissioner of Income Tax, Hisar Range Hisar
Assistant Commissioner of Income Tax, Hisar Range Hisar		M/s. Jindal Steel & Power Ltd. Jindal Centre, 12, Bhikaiji Cama Place New Delhi
(APPELLANT)		(RESPONDENT)
(PAN : AAACJ7097D)		

**Assessee by : Shri Salil Kapoor,
Revenue by : Sh. S. Najmi, CIT**

Date of Hearing: 13.09.2021	Date of Pronouncement: 12 .11.2021
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ORDER**PER Bench**

These two appeals ITA No. 110/Del/2010, ITA No. 1407/Del/2011, the assessee against the order of the Id. CIT(A)-Rohtak, dated 23.10.2009, 03/01/2011, against the order of the Ld. CIT(A), Rohtak dated 02/11/2011.

2. The issues pertainsto levy of FBT in relation to CSR obligation and on account of aircraft purchase thereof.

3. The brief facts relevant to the adjudication of the case are that the return of Fringe Benefit Tax (FBT) for the assessment year i.e 2006-07 was filed by the appellant on 28.11.2006 at Rs. 4,12,60.3514 against which assessment under section 115WE(3) of the Income-tax Act, 1961 has been completed at Rs. 6,06,71,050 after making additions to the FBT income declared by the appellant. The addition made to the value of fringe benefits made by assessing officer have been challenged in appeal before CIT(A). The CIT(A) has enhanced the taxable Fringe Benefits. The addition by AO/CIT(A) and enhancement by CIT(A) are challenged before the ITAT.

4. The appellant had taken an aircraft on lease for a period of 84 months from GE Capital Services India against payment of annual lease rental of Rs. 7,94,22,735. In accordance with the Accounting Standards (AS-19) issued by Institute of Chartered Accountants of India (ICAI), the said lease was qualified as finance lease for the purposes of accounting the lease transactions in the books of accounts. In the books of account the lease

rental of Rs.7,94,22,735 paid by the appellant was accordingly, divided into two components, viz., payment towards the capital cost, amounting to Rs. 6,89,75,556, and towards finance charges, amounting to Rs. 1,04,47,179. However, in the regular return of income deduction was claimed with respect to total amount of lease rental aggregating to Rs.7,94,22,735 and no depreciation was claimed on the said aircraft taken on lease. Assessee had offered finance charges RS. 1,04,47,179/- for the purpose of FBT.

5. AO while passing the assessment order made the addition of 1,58,84,547/- being twenty percent of total lease rental of aircraft amounting to Rs. 7,94,22,735. The matter was challenged before CIT(A). The CIT(A) has mentioned in paragraph 4.2 that the Assessee itself accepted the total lease rental of Rs. 7,94,22,735/- is liable for FBT and dismissed the grounds. Whereas correct position is that Assessee has offered Rs. 1,04,47,179/- which is liable for FBT out of total lease rental of Rs. 7,94,22,735/- Hence, AO wrongly made addition of 1,58,84,547 (20% of Rs.6,89,75,556/- + 1,04,47,179) which was upheld by CIT(A). Assessee had offered finance charges RS. 1,04,47,179/- (out of total rental of Rs. 7,94,22,735/-) for the purpose of FBT.

6. The arguments of the assessee are that by having Aircraft on lease there is no benefit being given to employees. Appellant is having factories in remote areas in Chhattisgarh and Orissa which is not connected by commercial flight. In order to operate its business, the senior management / employees had to visit factory regularly for smooth functioning of business and had to use its own aircraft. Hence, no addition is called for on this account as the expenditure relates to business necessity and not for the benefit of

any employees. There is no benefit being given to the employees by incurring such expenses.

7. With regard to the construction of Hospital, Ld. CIT(A) held that the construction of the hospital and school auditorium has not been considered by the AO and enhance the same u/s 115WE (3) of the Act. With regard of this issue, Id. AR are that townships constructed and maintained by the assessee are situated in the remote area and its roads and gardens are to be maintained by the assessee on which no house tax is levied by the local authorities, the same cannot be treated to have been incurred by the assessee in the capacity of an employer and as such, cannot be treated as part of the FBT. It was argued that when the assessee is responsible for upkeep and maintenance of the townships, the same cannot be said to have erected for the welfare of the employees rather it is a necessity for the assessee to run the business in the remote areas as well as to enable the employees to serve in the remote places. It was argued that similar addition has been deleted in the AY 2006-07, by the Id. CIT (A) whereas Id. CIT (A) in AYs 2007-08 & 2008-09 has confirmed the addition on this account, hence need to be ordered to be deleted.

8. Ld. DR supported the orders of the authorities below.

9. Heard the arguments of both the parties and perused the material available on record.

10. With regard to the disallowance on account of Air Craft, we find that there is no benefit given to the employees since the place is not connected by the regular flights. It is necessary for the employees of the company to visit various factories situated at Chhattisgarh and Odisha. It is a business requirement and a business contingency. Hence,

we hold that no further addition on this issue is required.

11. With regard to the hospital construction and auditorium, we find that the city where the factory situated needs to be provided medical facilities to the employees of the company. It is also a commitment entered between the assessee and the state authorities for development of Raigarh city. It is an absolute necessity to have such facilities like schools, hospital in that area so that the Assessee can get labor/ employees in that area and it also help in the overall development of the area. Hence, it is not be added under the provision of FBT. It is pertinent to note that in case of big industries the local people have to put up with certain inconvenience caused by the activities of the Assessee, may be due to pollution or otherwise. The same needs to be taken care in an ecological perspective The assessee has incurred the above expenditure in the construction of building and other desired infrastructure to secure, develop the area to attract the quality employees as well as to enable the business to establish, continue & grow.

12. Hence, keeping in view the facts and circumstances of the case, we delete the addition made by the revenue on account of FBT in relation to the construction of hospital and school auditorium.

13. In the result, both the appeals of the assessee are allowed.

ITA No. 2342/ Del./2014, A.Y. :2007-08
ITA No. 204/ Del./ 2012, A.Y. :2006-07

In view of the order above, the penalty levied is hereby obliterated.

Order pronounced in open court on this 12th day of November, 2021.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Binita

Dated : 12 /11/2021

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

Sd/-

(Dr. B.R.R.KUMAR)
ACCOUNTANT MEMBER

AR, ITAT
NEW DELHI.