

आयकर अपीलीय अधिकरण
मुंबई पीठ "सी", मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री ओम प्रकाश कांत, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "C", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

आअसं. 262/मुं/2021 (नि. व. 2006-07)

ITA NO.262/MUM/2021 (A.Y.2006-07)

आअसं. 265/मुं/2021 (नि. व. 2007-08)

ITA NO.265/MUM/2021 (A.Y.2007-08)

आअसं. 264/मुं/2021 (नि. व. 2008-09)

ITA NO.264/MUM/2021 (A.Y.2008-09)

आअसं. 263/मुं/2021 (नि. व. 2009-10)

ITA NO.263/MUM/2021 (A.Y.2009-10)

Cipla Limited

Cipla House, Peninsula Business Park,

G.K. Marg, Lower Parel,

Mumbai-400013.

PAN: **AAACC1450B**

..... अपीलार्थी / Appellant

बनाम Vs.

Asst. CIT, CC-1(2),

9th Floor, Room.No. 906,

Old C.G.O. Building,

M.K. Road, Mumbai-400020

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Yogesh Thar

प्रतिवादी द्वारा/ Respondent by : Sh. Anand Mohan

सुनवाई की तिथि/ Date of hearing : 20/01/2022

घोषणा की तिथि/ Date of pronouncement : 31/01/2022

आदेश / ORDER**PER BENCH:**

These four appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-47, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Years 2006-07 to 2009-10, respectively. All the impugned orders by CIT(A) are of even date i.e. 13.02.2020. Since, identical grounds have been raised in all these appeals, these appeals are taken up together for adjudication and are decided by this common order. For the sake of convenience, these appeals are decided in seriatim of Assessment Year (AY). The facts are narrated from the appeal of assessee in ITA No. 262/Mum/2021 for AY 2006-07.

ITA No. 262/Mum/2021 for AY 2006-07

2. The assessee in appeal has raised single issue with regard to applicability of the provisions of Fringe Benefit Tax (FBT) under section 115WE of the Income Tax Act (hereinafter referred to as 'the Act') in respect of expenses incurred on non-employees.

3. Sh. Yogesh Thar appearing on behalf of the assessee submitted that this is a second round of litigation before the Tribunal. In first round, the Tribunal had restored the issue in assessee's appeal to the Assessing Officer appeal with a specific direction. The Id. Counsel referred to the order of Tribunal dated 17.10.2014 wherein the appeals of the assessee in ITA Nos. 2666/Mum/2010 for AY 2007-08, ITA No. 4908/Mum/2009 for AY 2006-07 & ITA No. 2467/Mum/2011 for AY 2008-09, were decided. The Id. Counsel submitted that the Tribunal had set-aside the issue of Fringe Benefit Tax (FBT) to the Assessing Officer (AO) to verify and examine the expenses which are not in relation to the employees of the assessee and thereafter decide the issue in accordance with the observations

made in the said order. The AO in utter violation of the directions of the Tribunal decided the issue in a different dimension altogether.

Aggrieved by the assessment order dated 31.03.2016 passed under section 115WE(3) r.w.s. 254 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) again without understanding the directions of the Tribunal and without appreciating the facts dismissed the appeal of assessee and upheld the assessment order in second round.

4. The Id. Counsel submitted that the Tribunal had given clear direction and the scope in para 8 to 10 of the order dated 17.10.2014, however, the AO has decided the issue not in accordance with the directions of the Tribunal. Hence, the assessment order and the order of the CIT(A) is liable to be quashed.

5. Sh. Anand Mohan representing the Department vehemently supported the impugned order and prayed for dismissing appeal of the assessee.

6. We have heard the submissions made by rival sides and have perused the orders of the authorities below. The assessee is in second round of litigation before the Tribunal. In the first round, the co-ordinate bench after considering the submissions of the assessee and analyzing the decisions in the case of T.V. Today Network Ltd. Vs. DCIT 38 taxmann.com 409 (Del. Trib.) and T&T Motors Ltd. Vs. Asstt. CIT 341 ITR 332 (Del.) restored the issue back to the file of AO by observing as under:

“10. Further, as it was considered by the Delhi Benches that in case of “R&B Falcon (A) (P.) Ltd. v. CIT” – [2008] 301 ITR 309/169 Taxman 515 (SC), the Hon’ble Supreme Court has held that the interpretation of Central Board of Direct Taxes in its circular being in the realm of executive construction should primarily had to be bounded safe and except where it violates any provision of law or is contrary to any judgment rendered by any court, therefore, if the interpretation/construction of

CBDT in the circular is violation of the provision itself the same cannot overwrite the provisions of the Act. The decision relied upon by the Id. D.R. is not applicable in view of the decision of Hon'ble Delhi High Court (supra) as well as decision of Hon'ble Supreme Court has considered by the Delhi Benches of this Tribunal in the case of "T.V. Today Network Ltd. vs. Deputy Commissioner of Income-tax" (supra). Even otherwise, a similar view has been taken by the Tribunal in the series of decisions as relied upon by the assessee. Accordingly, this issue is set aside to the record of the Assessing Officer to verify and examine the expenses which are not in relation to the employees of the assessee and then decided the issue as per above observation.

7. The AO while giving effect to the above order of Tribunal observed as under:

"5. With regards to the first issue, the submission are as below:

"Non-employee related expenses.

The tribunal has directed that the non-employee related expenses should not be charged to FBT subject to verification.

In this behalf we are enclosing herewith the following:

- 1. The trial balance wherein the expenses incurred where employees were not involved has been highlighted separately.*
- 2. Chart of the expenses specified under u/s 115WB(2), providing a clear cut distinction between the expenses which are related to the employees and the other expenses where there is not involvement of employees at all.*
- 3. The evidence in support of the non-employee related to expenses where furnished in the course of assessment in the submission dated 09/12/2008.*
- 4. In view of aforesaid, it is submitted that the non-employees relating expenses amounting to Rs. 46,14,26,465/- as per the enclosed chart, should not be charged to FBT."*

The submission of the assessee is perused carefully. The assessee has basically claimed that wherever the expenditure incurred pertains to non-employees, the same are outside the purview of Fringe Benefit Tax.

I find that this is neither the direction of Hon'ble ITAT nor the position of law. The Hon'ble ITAT has cited the ruling in the case of T & T Motors Ltd. vs. ACIT (2012) 341 ITR 332 (Delhi) whereby expenditure incurred on accessories supplied to the buyer of car was treated as Sales Promotion within the meaning of Section 115WB (2)(D) and held to be liable for FBT. The Hon'ble Court held that such

accessories given to the buyer of car (customers) comes within the exceptions given in section 115WB (2)(D), hence outside the purview of FBT.

Similarly, in another ruling T.V. Today Network Ltd. vs. DCIT relied upon by Hon'ble ITAT was in the context of assessee's payment towards channel placement taxed as Sales Promotion. In that case also, it is held that the expenditure comes within the purview of exception given in section 115WB(2)(D), hence, outside the scope of FBT.

Since none of the expenditure claimed by the assessee satisfy the criteria laid down by the ruling of T.V. Today (supra) and T & T Motors (supra), I hold that the assessee is not eligible for any relief. These expenditures are chargeable to FBT under section 115WB(2)."

8. A bare perusal of the above observations in the assessment order clearly shows that the AO has misdirected himself in interpreting the directions of the Tribunal. The co-ordinate bench in a clear and un-ambiguous manner had stated that the AO is directed to verify and examine the expenses which are not in relation to the employees of the assessee and then decide the issue. We find that in the instant case the AO has questioned the order of Tribunal in placing reliance on the decisions rendered in the case of T & T Motors Ltd. Vs. ACIT (supra) and T.V. Today Network Ltd. Vs. DCIT (supra). It is not open to the AO to disregard the decision of Appellate Authority. The AO is duty bound to follow the directions of Tribunal. Particularly, when the decisions on which question has been raised by the AO have been specifically dealt with by the Tribunal and has been applied consciously while restoring the issue back to AO with specific directions to verify and examine the expenses which are not in relation to the employees of the assessee. The AO cannot scuttle from the binding directions of Appellate Authority merely for the reason that he is not in agreement with the directions of the Tribunal. The judicial discipline demands that all authorities sub-ordinate to Appellate Authority are duty bound to follow the decision of Superior Authority. Judicial indiscipline would lead to state of anarchy and confusion. The manner in which the AO has dealt with the order of Tribunal while giving effect is deplorable.

9. This appeal by the assessee pertains to AY 2006-07. A fair opportunity was granted to the AO to examine the issue, however, the AO has failed to examine the issue in right direction and in compliance with the order of Tribunal. The AO does not deserve further opportunity to examine the same issue third time. Therefore, the impugned order is quashed and appeal of the assessee is allowed.

ITA NO.265/MUM/2021 (A.Y.2007-08)

ITA NO.264/MUM/2021 (A.Y.2008-09)

ITA NO.263/MUM/2021 (A.Y.2009-10)

10. Both sides are unanimous in stating that the facts germane to the issue raised in these appeals are identical to the facts in the appeal of assessee for AY 2006-07. The second round of appeal emanates from the directions of the Tribunal vide order dated 17.10.2014 common for AY 2006-07, 2007-08 and 2008-09. The AO has decided the issue in all these AYs in identical manner. Since, the grounds raised in the appeal and the facts in all these appeals are identical to the facts and the grounds raised in AY 2006-07, The findings given while adjudicating the appeal of the assessee for AY 2006-07 would *mutatis mutandis* apply to the present set of appeals. Therefore, these appeals are allowed for parity of reasons.

11. To sum up, the appeals of the assessee in ITA Nos. 262 to 265/M/2021 are allowed.

Order pronounced in the open court on **Monday**, the 31st day of **January**, 2022.

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई / Mumbai, दिनांक / Dated: 31/01/2022

SK, Sr.PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai