

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2663/Del./2019
(ASSESSMENT YEAR : 2007-08)**

Addl.CIT, Special Range 4, vs. Hindustan Coca-Cola Beverages
New Delhi. Pvt. Ltd.,
13, B-91, Mayapuri Industrial Area,
Phase – I,
New Delhi – 110 002.

(PAN : AAACH3005M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sachit Jolly, Advocate
REVENUE BY : Ms. Anupama Singla, Senior DR

Date of Hearing : 23.05.2022
Date of Order : 27.05.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the revenue is directed against order of Id. CIT (A)
dated 28.12.2018 and pertains to assessment year 2007-08.

2. The grounds of appeal read as under :-

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in law in deleting the addition of Rs.7,87,29,594/- to fringe benefit on account of advertisement expenses solely y relying on the decision of the Hon’ble ITAT for the AY 2008-09, whereas the assessee had failed to submit complete documentary evidence which can prove that the expenditure falls within the purview of proviso to section 115W(2)(d) of the Income Tax Act, 1961.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) erred in law in not appreciating the fact that the assessee submitted only sample evidence before the Assessing Officer and also did not submit complete details in the form of invoices/bills/vouchers before the Ld. CIT (A)."

3. Brief facts of the case are that assessee company is engaged in the business of manufacturing and trading of non-alcoholic beverages. For A.Y. 2007-08, the assessee filed its return of Fringe Benefit Tax ("FBT") on October 30, 2007 along with return of income declaring value of Fringe Benefits at Rs.10,19,79,612/-. The aforesaid return was selected for scrutiny and assessment was completed under section 115WE(3) of the Act vide order dated Nov 24, 2009 at Fringe Benefit value of Rs.18,44,29,053/- after making the following adjustment to the taxable value of Fringe Benefits.

Sl.No.	Additions/Disallowances	Amount
	Total Fringe Benefits as declared by the Appellant	10,19,79,612
(i)	Added: Conveyance tours and travels (20% of 185,99,237)	37,19,847
(ii)	Added: Advertisement, Publicity and Sales Promotion (20% of 39,3647,972)	7,87,29,594
	Assessed Fringe Benefits	18,44,29,053

4. Against the above additions made in the assessment order, the assessee has filed an appeal before the Ld. CIT(A)-XXVIII, New Delhi. The CIT(A)-XXVIII, dismissed the appeal of the Appellant vide appeal order no. 75/10-11 dated Dec 26, 2013. The appeal was mainly dismissed on the ground that the assessee company has not furnished adequate

details to the satisfaction of the Ld. CIT(A) and accordingly the CIT (A) upheld that the assessee has not been able to conclusively prove that the expenses are not liable to FBT as per CBDT circular no. 8/2005 and in accordance with the provisions of Sec 115WB(2)(D) of the Act. The assessee filed an appeal before the ITAT against the order of CIT(A). The ITAT vide its order (ITA no. 1026 &1027/Del/2014) dated May 20, 2016 has partly allowed the appeal on account of 'Conveyance tours and travels'. With regard to expenses under 'Advertisement, Publicity and Sales promotion) the ITAT remanded back the matter to the AO for fresh adjudication.

5. On the issue of FBT on advertisement publicity and sales promotion, ITAT remanded the matter to the file of assessing officer with the following observation :-

“Regarding expenditure incurred on advertising and sales promotion, it is clear from the order of the Ld.CIT(A) that the assessee has provided 75% of the details. The assessee claims that it had submitted given the entire details before the revenue authorities. As the dispute is whether the requirement documents and details were furnished to the AO or not, we deem it fit and proper to set aside this issue to the file of the A.O. for fresh adjudication in accordance with law.”

6. Pursuant to the aforesaid ITAT order, assessing officer took the matter. He noted that now the details were provided. But he did not specify the reason of rejecting the assessee's claim and repeated the disallowance as under :-

“The details of Advertisement, Publicity and Sales promotion expenses along with invoice copy submitted have been examined and

it is found that the expenses amounting to Rs.30,36,47,972/- which is not offered and included for Fringe Benefit Tax by the assessee company in its computation of Fringe Benefits Tax are liable for Fringe Benefit Tax. The assessee company has also relied on CBDT Circular No.8/2005 dated 29th August, 2005 which also do not support the case of the assessee. The contention of the assessee company that the expenses of Rs.39,36,47,972/- incurred on Advertisement, Publicity and Sales promotion expenses are not liable for Fringe Benefit Tax in view of exemptions provided in Section 115WB(2) of the Act is rejected and 20% of the amount of Rs.39,36,47,972/- incurred on Advertisement, Publicity and Sales promotion expenses by the assessee company i.e. Rs.7,87,29,594/- is charged to Fringe Benefits tax as per provisions of Fringe Benefits Tax.”

7. Against the above order, assessee appealed before the ld. CIT(A).

Ld. CIT (A) noted assessee's submission that assessing officer has rejected the assessee's claim without specifying anything and that identical issue has been decided in favour of assessee. The ld. CIT (A) has held as under :-

“The AR of the appellant has stated that the AO had not verified the details/ documents submitted before the Ld. CIT(A) as an additional evidences and accordingly, the Hon'ble bench has deemed it proper to remand the matter back to the AO for his verification and the AR has argued that the Hon'ble Tribunal in its order has refrained from dealing with the aforesaid issue on the merits of the case and set aside the matter back to the AO for verification of documents and details. Thereafter, fresh proceedings were initiated by the AO vide notice dated March 03, 2017 and the AR of the appellant has submitted that detailed submissions were made before the AO against the aforesaid adjustment on account of Advertisement, Publicity and Sales Promotion expense. The AO vide order dated June 29, 2017 upheld the aforesaid adjustment by stating that the expenses incurred on Advertisement, Publicity and Sales Promotion are liable to Fringe Benefit Tax (FBT). The AR of the appellant has argued that the adjustment were made by the AO without stating any legal merits and logical reasoning for the same and the AO has not given any adverse finding as to the details and supporting vouchers produced before him, in support of the claim.

4.2.3.2. AR of the assessee has submitted that on similar issue Hon'ble ITAT has decided in favour of the appellant for A.Y. 2008-09. The relevant extract of ITAT order of AY 2008-09 is reproduced below:

"8. We have carefully considered the rival contentions. With respect to the total expenditure of Rs.46.92 crores the assessee has given a detailed break-up which shows that these expenditure are not chargeable to tax of fringe benefit. The complete chart is placed at page Nos. 3 and 4 of the paper book. According to that chart most of the expenditure are advertisements, banners, newspapers, printed materials etc. on which FBT is not chargeable. The assessee has himself stated that conference charges have already been considered in return of FBT including dealers' conference expenses. Further the scholarship was also offered for taxation. As per the page Nos. 3 and 4 of the paper book, the learned Departmental Representative could not controvert that how the decision of the CIT (Appeals) in deleting the addition partly was erroneous. Further Co-ordinate Bench has held that Fringe Benefit Tax is not leviable on channel placement charges paid to cable operators by T.V. Channel- Companies. Therefore, respectfully following the decision of the Co-ordinate Bench, we also hold that addition upheld by the learned CIT (Appeals) deserves to be deleted. Though assessee has submitted the sample invoices, but they show that on these expenditure, fringe benefit tax is not chargeable. In view of this, we dismiss ground No. 1 of the appeal of the Revenue and allow ground No. 2 of the appeal of the assessee."

4.2.3.3. The AR of the appellant has pointed out and submitted that the facts of the case are similar to the facts in A.Y. 2008-09 wherein the Hon'ble ITAT has decided this issue in favour of the appellant. Therefore, maintaining judicial discipline and respectfully following Hon'ble ITAT decision, appeal on ground nos. 1 to 4 are allowed."

8. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the records. Ld. DR for the Revenue submitted that Id. CIT (A) has not examined the submissions and has reversed the order of assessing officer without giving any reason. She pleaded that the order of Id. CIT (A) is not sustainable. Per contra Id. counsel of the assessee submitted that the issue is squarely covered in favour of the assessee. He submitted that on identical issue in earlier year as well as in subsequent year, the ITAT has decided the issue in favour of

assessee. He submitted that for the present year the matter was remanded to the file of assessing officer as the ITAT has noted that only 75% of the details were available. Ld. counsel submitted that now the details have been submitted and assessing officer has rejected the assessee's claim without pointing out any defect in the assessee submissions. He pleaded that there was no adverse comment by ITAT on the 75% detail available at that time. The learned counsel of the assessee submitted that assessee has duly given submissions before the assessing officer and the Id. CIT (A) has duly noted the same in the body of his order. The Id. counsel submitted that in the submissions, it was made clear that no FBT was exigible on these expenditures. He submitted that after duly taking note of the assessee's submission, finding the issue to have been covered in favour of the assessee by earlier and subsequent decision of ITAT, the Id. CIT (A) has allowed the assessee's claim. Ld. counsel of the assessee submitted that Revenue has filed appeal before the Hon'ble High Court against the earlier order of ITAT and Hon'ble High Court has asked the Revenue to inform as to what is the perversity in the order of the ITAT. The Id. counsel submitted that it has been 5 years since the matter is pending before the Hon'ble High Court and the Revenue has not made any response.

8. Upon careful consideration, we find ourselves in agreement with the proposition that the issue stands covered in favour of the assessee by the earlier as well as subsequent decision of the ITAT. For the present year, the matter was remanded to the assessing officer as complete details were not available. Now it is not the case of the Revenue that the details are not available. Rather the AO has repeated the disallowance without specifying as to what is the defect in the assessee's claim in detail. In this view of the matter, we do not find any infirmity in the order of Id. CIT (A). Hence we uphold the same.

9. In the result, this appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on this 27th day of May, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 27th day of May, 2022
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Copy forwarded to:

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

AR, ITAT
NEW DELHI.
