

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1101/Ahd/2015
Assessment Year: 2006-07**

Bilfinger Neo Structo Pvt. Ltd., vs. The A.C.I.T., Circle-1,
(Formerly known as M/s. Neo Structo Construction Ltd.),
312, 3rd Floor,
Gemstar Commercial Complex,
Ramachandra Lane,
Extension Malad (W),
Mumbai – 400 064.
[PAN – AAACN 7717 N]
(Appellant) (Respondent)

Appellant by : Shri A.C. Shah, AR
Respondent by : Shri V.K. Singh, Sr. DR

Date of hearing : 05.07.2022
Date of pronouncement : 27.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 23.02.2015 passed by the CIT(A)-1, Surat for the Assessment Year 2006-07.

2. The assessee has raised the following grounds of appeal:

- “1 That on facts and in law, the learned CIT(A) has grievously erred in holding that payments of Rs.20,02,550/- towards provident fund and gratuity fund are liable to be included while computing fringe benefit tax.
2. That the learned CIT(A) has grievously erred in law and on facts in holding that Pooja Expenses of Rs.6,44,949/- @ 50% i.e. Rs.3,22,475/- is includible for levy of fringe benefit tax.
3. That the learned CIT(A) has grievously erred in law and on facts in holding that employee welfare expenses is includible in value of fringe benefit tax @ Rs.12.86,704/-“

3. The assessee filed E-return of Fringe Benefit on 27.09.2007 showing the total value of fringe benefit at Rs.24,48,731/- . After taking cognizance of the submissions of the assessee the Assessing Officer completed the assessment under Section 115WE(3) on 12.12.2008 on the total value of Fringe Benefit of Rs.16,82,781/-. The Assessing Officer further made addition on account of Employees Gratuity/Pension fund amounting to Rs.33,82,334/-, Festival Expenses, Gifts and Pooja Expenses amounting to Rs.10,12,365/-, Repair & Maintenance and Motor Car including depreciation amounting to Rs.4,79,076/- and the Travel Expenses amounting to Rs.1,06,108/- as well as Employees Welfare Expenses amounting Rs.12,86,704/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. Ld. AR submitted that the payment of Rs.20,02,550/- towards Provident Fund and Gratuity fund are not liable to be included while computing the Fringe Benefit Tax. The Ld. AR submitted that no approval is required as per Section 40A(7) of the Act but as of today the Ld. AR submitted that the approval may be there and the same may be produced before the Assessing Officer.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. From the perusal of the documents it can be seen that the approval related to gratuity is required and the same should have been produced before the Assessing Officer. Since the Ld. AR submits that the same can be produced before Assessing Officer, it will be appropriate to remand back this issue to the file of the Assessing Officer for verification of the approval as required under Section 40A(vii) of the Act. Needless to say the assessee be given opportunity of hearing. Ground no.1 is partly allowed for statistical purposes.

8. As regards 50% of Pooja expenses, the same is not includible for levy of Fringe Benefit Tax as per the contentions of the Ld. AR.

9. The Ld. DR relied upon the Assessment Order and the Order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that since it is not for the benefit of the employees as stated by the assessee which can be taken into account from the documents produced before the authorities, the submissions made by the Ld. AR is accepted. Ground no.2 is allowed.

11. As regards ground no.3 relating to Employees Welfare Expenses includible in value of Fringe Benefit Tax, the Ld. AR submitted that the details were properly filed before the Assessing Officer which were never taken into account by the CIT(A) as well as Assessing Officer. Ld. AR further submitted that the margin of expenses are in nature of Hotel Expenses, Advertisement Expenses, Hotel Stay and Food Expenses, Guest House Expenses and the same was given to the Assessing Officer with the documents and hence the same should not have been included in Fringe Benefit Tax.

12. The Ld. DR relied upon the Assessment Order and the Order of the CIT(A).

13. We have heard both the parties and perused all the relevant material available on record. The details which were given by the assessee before the Assessing Office as well as before the CIT(A) and from the perusal of the records produced before us shows that the same are related to the Employee Welfare expenses and cannot be included in the value of Fringe Benefit Tax. The details were totally discarded by the Assessing Officer as well as the CIT(A). Therefore, ground no.3 is allowed.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 27th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 27th day of July, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*