

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**Before Shri Challa Nagendra Prasad, Judicial Member
&
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 349/Del/2010 : Asstt. Year: 2006-07

M/s. Prakash Industries Ltd., Nr. IOCL Depot, Najafgarh- Briwasan Road, Bijwasan New Delhi 110061	Vs	The ACIT, Special Range, Hisar, Haryana
(ASSEESSEE)		(RESPONDENT)
PAN No. AABCP 6765 H		

**Assessee by : Ms. Ayushi Gupta, Adv.
Revenue by : Sh. Vivek Vardhan, Sr. DR**

Date of Hearing: 03.01.2024	Date of Pronouncement: 05.01.2024
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ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the assessee against the order of Ld.CIT, Rohtak dated 31.12.2009 for the A.Y. 2006-07.

2. The assessee has raised the following grounds of appeal are as under:-

1. *That on the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals), rohtak {Briefly the CIT(A)} erred in upholding disallowance in the value of Fringe Benefit.*

2. *That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the following expenditures under 20% category of FBT.*

a) Travelling & conveyance	-	4,05565
b) Vehicle Maintenance	-	16,21,509

c) <u>Staff Welfare</u>	
i) Medical Exp.	4,65,286
ii) Staff welfare incentive	1,05,987
d) Staff welfare pre operative	<u>1,82,455</u>
	27,80,802

3. The captioned appeal is in respect of Fringe Benefit Tax ("FBT") against the order passed by the Ld. Assessing Officer ("AO") under section 115WE(3) of the Income Tax Act, 1961 ("the Act").

4. The assessee computed value of FBT at Rs. 1,13,86,653/- while filing return after claiming certain expenses as exempt from FBT. Out of the said exempt expenses, the Ld. AO added Rs. 27,31,879/- as the value of FBT to the returned income of the assessee. The Ld. Commissioner of Income Tax (Appeals) ("CIT (A)") restricted the disallowance to Rs. 5,56,161/- being the value of FBT computed @20% of Rs. 27,80,802/-).

5. The details of expenses disallowed by the Ld. AO as exempt and sustained by the Ld. CIT (A) against which the assessee is in appeal are as under:

S.No	Particulars	Amount	Explanation
I	Travelling Expenses		Submissions filed before CIT (A) are at pages 4-5 of the PB.
1.	Taxi and jeep hire charges (Crushing division - Koira)	3,04,680	Details at page 22-23 of the PB - Free or subsidized transport service to employees from their residence to place of work at Koira, Odissa, where crushing plant of the assessee was situated and back to home is not liable to FBT. Exception u/s Section 115WB(3). Also Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-104. The place where crushing plant was

			situated was in a remote area having no connectivity with public transport.
2.	Taxi Hire charges (Sponge Iron division- Champa)	75,385	Details at page 20 of the PB - No employer-employee relationship exists between parties which is pre-requisite to levy FBT. Hence, exempt from FBT. Section 115WA - Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-1
3.	Travelling and others (Picture Tube - Pithampura)	25,500	Details at page 19 of the PB. Expenses are relating to tour of employees from Kolkata-Delhi-Kolkata from 10th June, 2005 to 14th June, 2005 and 13th March, 2006 to 15th March, 2006. Expenses are not in relation to conveyance but tour. As per Section 115WB(2)(Q) read with Section 115WC(1)(e) value of FBT on account of tour and travel (including foreign travel) shall be computed @ 5% of the expense.
II.	<u>Vehicle maintenance</u>		
1.	Vehicle hire charges (Sponge Iron division- Champa)	16,21,509	Details are at attached. The expense includes: a. Vehicle hire charges for guest from city to plant - Rs. 2,08,522/- -For the benefit of guests and not for employees. No employer employee relationship. Not liable to FBT. - Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-1 b. Vehicle hire charges for senior staff from their residence to place of work i.e, plant at Champa and back - Rs. 11,14,721/-. Not liable to FBT. - Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-104 c. Insurance, registration, accessories

			and other charges - Rs. 1,12,780/- d. EMI of car taken on loan for three employees - Rs. 1,85,376/- (includes interest of Rs. 55,000/-). - Not covered under section 115WB(2)H, hence not liable to FBT- Brihan Maharashtra Sugar Syndicate Ltd. (15 taxmann.com 300) – ITAT Pune.
III	<u>Staff Welfare expenses</u>		In respect of Medical expense - Submissions filed before CIT (A) are at page 11-12 of the PB. In respect of Refreshments - Submissions filed before CIT(A) are at page 12 and 13 of the PB.
1.	Medical expenses - Medical expenses incurred as reimbursement to the employees on presentation of bills	4,65,286	Details at: page 26 - Rs. 2,94,430/- (Pithampura) page 34-35 - Rs. 60,092/- (Rayya) page 36-38 - Rs. 1,10,764/- (Uttranchal) Reimbursement of medical expenses is a perquisite under section 17 and therefore, not liable to FBT- section 115WB(3). Wipro Ltd. (58 taxmann.com 220)- ITAT Bangalore
2.	Refreshments in office/factory at Raipur (Rolling Mill Division) during overtime -	1,05,987	Details at page 24 of the PB. The expenses were incurred in respect of food and beverages for the workers working at production division. As per Section 115WB(2)(B)(i) any expenditure incurred by the employer on payment of food or beverages provided to his employees does not within the purview of FBT. - Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-52
IV	<u>Pre-operative expenses</u>		Submissions filed before CIT (A) are at page 14 of the PB.
	Staff welfare - food and	1,82,455	Details are at pages 94-102 of the PB. Expenditure were incurred for

	beverages		providing food and beverages to the staff working at Steel division. As per Section 115WB(2)(B)(i) any expenditure incurred by the employer on payment of food or beverages provided to his employees does not within the purview of FBT. - Refer CBDT Circular No. 8/2005 dated 29.08.2005 - FAQ-52
	Total expenses	27,80,802	
	Value of FBT @20%	5,56,161	

6. Before us, the Id. AR argued placed on the submissions made before the Id. CIT(A) and the Id. DR supported the order of the Id. CIT(A).

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

8. With the regard to the taxi higher charges, we find that these expenses were incurred for providing transport services at cruising division at interior of Orissa where there was no connectivity with the public transport. Similarly the expenses incurred on taxi higher charges were incurred on account of non employers of the assessee company and an amount of Rs. 25,500/- was incurred not on account of conveyance but on account of tour & travel. Further, the vehicle higher charges of sponge Iron division were incurred for the purpose of guest but not for employees. These expenses also include medical expenses reimbursed of Rs. 4.65 lakhs and refreshment of Rs. 2.87 lakhs. Hence keeping in view CBDT Circular No. 8/2005 dated

29.08.2005 and judgments of Co-ordinate Bench of the ITAT Bangalore in the case of Wipro Ltd. (58 taxmann.com 220)- ITAT with regard to the medical expenses and order of the Co-ordinate Bench of the ITAT Pune in the case of Brihan Maharashtra Sugar Syndicate Ltd. (15 taxmann.com 300) with regard to loan given to the employees, we hold that no further addition other than the amount of Rs. 113,86,653/- is liable to be computed in respect of Fringe Benefit Tax(FBT).

9. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 05/01/2024.

Sd/-
(C.N Prasad)
Judicial Member

Dated: 05/01/2024

NV, Sr. PS

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI