

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No. 3367/Ahd/2014
निर्धारण वर्ष / Assessment Year : 2007-08

The DCIT Circle-1(1) Baroda (अपीलार्थी/ Appellant)	<u>बनाम/</u> <u>v/s.</u>	Gujarat State Electricity Corporation Ltd. Sardar Patel Vidhyut Bhavan Race Course Circle Alkapuri, Baroda - 390 007 (प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN: AAACG 6864 F		

Assessee by :	Shri M.K. Patel, Advocate
Revenue by :	Shri Prithviraj Meena, CIT-DR & Shri Regnesh Das, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/09/2024
घोषणा की तारीख /Date of Pronouncement: 26/09/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-I, Baroda (hereinafter referred to as "CIT(A)") dated 12.09.2014 for the Assessment Year (AY) 2007-08 arising out of an order passed by the Assessing Office (hereinafter referred to as "AO") u/s 115WE(3)/115WG of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Facts of the Case:

2. The assessee, filed its return of fringe benefits for the Assessment Year 2007-08, declaring a total value of fringe benefits at Nil. However, the tax audit report under section 44AB reported the value of fringe benefits at Rs.2,78,55,648/-. Upon noticing that fringe benefits chargeable to tax had escaped assessment, the AO reopened the assessment under section 115WG and completed the reassessment under section 115WE(3) read with section 115WG, determining the value of fringe benefits at Rs.3,68,94,408/-. This included an addition of Rs.90,38,760/- for expenses related to "use of health club and similar facilities," which were assessed at 50% instead of the 20% claimed by the assessee.

3. The assessee filed an appeal against the AO's order, contending that the expenses of Rs.3,01,29,201/- were incorrectly classified as "use of health club and similar facilities" and were instead related to guest house maintenance, security guard salaries, gardening, and cleaning expenses. The CIT(A) called for the Remand Report from the AO. The CIT(A), after considering the submissions and remand report, found that the AO had failed to establish that these expenses were for health club facilities. The CIT(A) accepted the assessee's claim that the correct valuation rate was 20%, not 50%, and directed the AO to reassess the fringe benefits accordingly.

4. Aggrieved by the order of CIT(A), the Revenue is in appeal before us with following grounds of appeal:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in directing the Assessing Officer to value the fringe benefits @ 20%, in respect of expenditure as "use of health club", without appreciating the fact that in the tax*

audit report the auditors has clearly mentioned and certified that this expenditure incurred for the use of health club and similar facilities.

2. *On the facts and in the circumstances of the case and in law, the Id. CIT(Appeals) has erred in directing the Assessing Officer to value the fringe benefits @ 20%, without appreciating the fact that the assessee company produced totally different ledger account, therefore, it was not acceptable and the assessing officer has rightly made the addition by adopting value of fringe Benefit @ 50% against 20% as adopted by the assessee*
3. *The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.*

Relief claimed in appeal:

It is prayed that the order of the CIT (Appeals) be set aside and that of the Assessing Officer be restored.

On the grounds of appeal:

4. During the course of the hearing before us, the Departmental Representative (DR) relied on the order of AO and pointed out that the assessee did not submit complete evidence during the assessment proceedings. On the other hand the Authorised Representative (AR) relied on the order of the CIT(A) and reiterated that the CIT(A) had rightly appreciated the nature of the expenses based on the remand report. The AR argued that the CIT(A) correctly concluded that the rate of 20% was applicable and that the AO's addition was unjustified.

5. We have heard the rival submissions and perused the material on record, including the assessment order, CIT(A)'s order, and the remand report. We note that the remand report was prepared by the AO during the appellate proceedings as directed by the CIT(A). The purpose of the remand was to verify the nature of the expenses amounting to Rs.3,01,29,201/-, which the AO had initially classified as expenses related to "use of health club and

similar facilities" and assessed at a fringe benefit tax (FBT) valuation rate of 50%. The AO was asked to verify whether the expenses were genuinely incurred for health club and similar facilities or were related to other activities, as claimed by the assessee. During the remand proceedings, the assessee submitted detailed documentation, including breakup of expenses under various heads such as guest house staff salaries, colony security guard salaries, gardening maintenance, and cleaning expenses, a certified statement from the Internal Auditors of the company showing that the expenses were related to guest house operations and maintenance rather than health club facilities. The assessee clarified that the total expenditure of Rs.3,01,29,201/- included:

- Salaries of employees working at the guest house: Rs.95,63,128/-.
- Security guard salaries for the colony: Rs.1,05,49,772/-.
- Gardening maintenance expenses for the colony: Rs.37,51,304/-.
- Cleaning expenses for the colony: Rs.55,40,297/-.
- Electricity charges for the guest house: Rs.7,19,100/-.
- Miscellaneous charges like water bills and refreshments for employees.

5.1. The assessee contended that these expenses were not related to health club use but were mistakenly grouped under that head in the tax audit report. The AO, in the remand report, acknowledged that the assessee had provided documentation indicating that the expenses were related to guest house operations, colony maintenance, and security. However, the AO noted that the assessee did not provide complete books of accounts, bills, and vouchers to substantiate the nature of each expense during the remand proceedings, although summary statements were submitted. The AO maintained that

while some expenses appeared unrelated to health club use, the classification in the tax audit report still indicated otherwise. The AO did not find conclusive evidence in the remand report that all the expenses were improperly categorized as health club facilities.

5.2. The assessee informed the CIT(A) that while voluminous data existed, it was not practically possible to submit every single document and voucher during the appellate proceedings. However, the assessee reiterated that the statements and evidence provided were sufficient to demonstrate that the expenses did not fall within the category of health club and similar facilities. The CIT(A) reviewed the findings of the AO as stated in the remand report and noted that the AO did not provide any evidence showing that the expenses of Rs.3,01,29,201/- were incurred for health club and similar facilities. The expenses were related to salaries of guest house employees, security guards, garden maintenance, and colony cleaning, which were not connected to health club use. The AO admitted that the assessee had submitted detailed documentation during the remand proceedings, including a certified statement from the Internal Auditors verifying the nature of these expenses after examining the books of accounts and other evidence. Since there was no proof linking the expenses to health club facilities, the CIT(A) concluded that the correct valuation rate for these fringe benefits was 20%, not 50%. For the sake of clarity, we reproduce the relevant para from the order of CIT(A):-

“7.1 The findings of the AO as given in the remand report have been considered. The fact is that nowhere in the remand report it is mentioned by the AO that any part of amount of Rs. 3,01,29,201/- was incurred by the appellant for Health Club and similar facilities. As can be seen from the above, the expenses are incurred for salary of employees working in Guest House, for salary of Security Guards, for maintenance of garden and for cleaning of colony. As admitted by the AO that during the course

of remand proceedings the appellant had submitted the documents showing the details of nature of Fringe Benefits, amount and account heads of relevant expenditure incurred in respect of various units etc. However, none of the documents as submitted by the appellant are identified by the AO which are related to use of Health Club and similar facilities. Moreover, a statement, duly certified by the Internal Auditors of the company has been submitted by the appellant to the AO during the course of remand proceedings. This statement was issued by the Internal Auditors after verifying the books of accounts and other evidences. Thus, in absence of any evidences it cannot be said that the expenses of Rs. 3,01,29,201/- or any part of such expenses of-Rs. 3,01,29,201/- have ever been incurred by the appellant for use of Health Club and similar facilities. In view of these facts in my opinion, the expenses of Rs. 3,01,29,201/- is subject to rate of 20% and not the rate of 50% for valuing the fringe benefits. In view of this the AO is directed to value the fringe benefits in respect of above expenditure of Rs. 3,01,29,201/- by applying the rate of 20%. In result, this ground of appeal of the appellant is allowed. 8 The third ground of appeal of the appellant is that the learned Assessing Officer erred in law and on facts and has initiated penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 for the alleged concealment and/or furnishing of inaccurate particulars of income. This ground of appeal of the appellant being premature cannot be entertained at this stage and therefore the same is dismissed."

5.3. The DR's argument that the assessee failed to submit evidence during the assessment proceedings does not hold merit, as the CIT(A) appropriately utilized the remand proceedings to allow the assessee to present sufficient evidence, including a certificate from the Internal Auditor. This certificate, along with supporting documents, verified that the expenses were related to guest house operations, security, and maintenance, not health club facilities. The AO's assessment lacked conclusive evidence to support the application of a 50% valuation rate. Therefore, the CIT(A) was correct in directing the application of the 20% rate for valuing the fringe benefits.

5.4. In view of the above findings, we find no infirmity in the order of the CIT(A). The Revenue's grounds of appeal lack merit and do not warrant any interference.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 26th September, 2024 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद / Ahmedabad, दिनांक/26 09/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-I, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad