

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI MAKARAND VASANT MAHADEOKAR,
ACCOUNTANT MEMBER**

**ITA No.7360/Mum/2025
(Assessment Year :2009-10)**

Apar Lubricant Ltd., Apar House, Corporate Park Building No.5, Sion Trombay Road Chembur, Mumbai-400 021	Vs.	DCIT 14(1)(1), Mumbai
PAN/GIR No.AAFCA9468A		
(Appellant)	..	(Respondent)

Assessee by	Shri Malav P. Seth
Revenue by	Shri Surendra Mohan, Sr. DR
Date of Hearing	13/01/2026
Date of Pronouncement	27/01/2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee, M/s Apar Chematek Lubricants Ltd. (now merged with M/s Apar Industries Ltd.), against the order passed by the learned CIT(A) in relation to reassessment proceedings initiated under section 147 for Assessment Year 2009-10, whereby addition has been made to the value of fringe benefits on account of advertising, publicity and sales promotion expenses under

section 115WA of the Income-tax Act, 1961. The assessee has, inter alia, challenged both the validity of reopening as well as the addition made on merits. However, in the course of hearing, it was fairly urged that since the issue can be decided purely on merits in favour of the assessee, the validity of reopening under section 147 may be kept open and treated as academic.

2. Briefly stated, the assessee is engaged in the business of marketing lubricants and allied products. For the relevant year, it had debited an amount of Rs. 1,41,01,455/- under the head "Advertising, publicity and sales promotion expenses" in its profit and loss account. During the original assessment proceedings under section 143(3), the assessee had placed on record the complete details of these expenses, including ledgers, documentary evidences, and a detailed note on their nature. It was unequivocally explained that these expenses were incurred in the course of marketing business and primarily related to performance-based incentives to dealers and distributors, distribution of promotional articles such as key chains, torches, watches, bags, T-shirts, etc., payments to advertising agencies, exhibition stall charges, and sales commissions. It was further clarified that these expenditures were incurred towards third parties and not towards employees, and that they did not result in any fringe benefit, direct or indirect, to any employee of the assessee.

3. Subsequently, reassessment proceedings were initiated in respect of fringe benefit tax, on the premise that 20% of the advertising and sales promotion expenses were liable to be

treated as taxable fringe benefits under section 115WB(2)(D). In the reassessment order, the Assessing Officer made an addition of Rs. 1,08,22,335/- by treating certain components of sales promotion, advertising and publicity expenses as liable for FBT, mainly on the reasoning that the assessee had distributed promotional articles and that documentary evidence was not sufficient to substantiate the nature of expenditure.

4. The break-up of expenses, as placed on record by the assessee, revealed that out of the total expenditure of Rs. 1,41,01,455/-, certain items such as sales meet expenses had already been considered for FBT in the return of income; several items were expressly covered by the proviso to section 115WB(2)(D) and hence excluded; and only the balance was sought to be subjected to FBT by the Assessing Officer. The assessee had also placed on record sample documentary evidences from M/s Savita Enterprises, to whom payments were made for supply of promotional articles, and had categorically demonstrated that the said party was an independent third party and not an employee of the assessee.

5. The learned counsel for the assessee submitted that the entire foundation of FBT rests on the concept of a "fringe benefit" being a consideration for employment. It was contended that section 115WB(1) defines fringe benefits as any consideration for employment provided by the employer to his employee, and sub-section (2) is merely a deeming provision which brings within its fold certain categories of expenditure incurred by the employer in the course of

business, but only to the extent such expenditure partakes the character of a benefit to employees. It was thus urged that where the expenditure is incurred on third parties, such as dealers, distributors, advertising agencies, and customers, and does not result in any benefit, direct or indirect, to any employee, it cannot be treated as a fringe benefit within the meaning of Chapter XII-H.

6. It was further submitted that the proviso to section 115WB(2)(D) expressly excludes from the ambit of FBT several categories of expenditure on sales promotion and publicity, including expenditure on advertisement in print or electronic media, holding of business conventions, sponsorship of events, publication of notices, distribution of samples, and payments to persons of repute for promotion of sales. It was pointed out that the assessee's expenditure squarely falls within these exclusions, and in any case, does not result in any employee benefit.

7. Reliance was placed on the decision of the Mumbai Tribunal in DCIT v. Kotak Mahindra Old Mutual Life Insurance Ltd. [2012] 134 ITD 388, wherein it has been held that section 115WB is a deeming provision and applies only when the expenditure is in the nature of consideration for employment, and that fringe benefit cannot arise when expenditure is incurred on persons who are not employees. It was further urged that the Hon'ble Delhi High Court in T&T Motors Ltd. v. ACIT [2012] 341 ITR 332 has held that the cost of accessories or promotional items supplied to customers as part of a sales package cannot be treated as sales promotion

or publicity expenses liable to FBT, as the customer has paid the sale consideration and no separate or additional charge is levied for such accessories. The assessee also placed reliance on the judgments in *Smith Kline & French (India) Ltd. v. CIT* [1992] 193 ITR 582, *Tuticorin Alkali Chemicals and Fertilizers Ltd.*, and several other coordinate bench decisions, to contend that sales promotion and publicity expenses are in the nature of business expenditure incurred to promote sales and goodwill, and not fringe benefits to employees.

8. On the other hand, the learned Departmental Representative supported the order of the Assessing Officer and the learned CIT(A), and contended that the distribution of promotional articles and incurrence of advertising and publicity expenses fall within the ambit of section 115WB(2)(D), and that the assessee had failed to conclusively demonstrate that no employee benefit was involved.

9. We have carefully considered the rival submissions, perused the material placed on record, and examined the statutory scheme of Chapter XII-H relating to fringe benefit tax. The very edifice of FBT rests on the concept that a fringe benefit is a consideration for employment. Sub-section (1) of section 115WB defines fringe benefits as any consideration for employment provided by the employer to his employee. Sub-section (2) is a deeming provision which expands the scope of fringe benefits to include certain categories of expenditure incurred by the employer in the course of business or profession. However, this deeming fiction cannot be divorced from the core statutory requirement that the expenditure

must result in a benefit to the employee, whether directly or indirectly.

10. In the present case, the factual matrix on record unmistakably demonstrates that the impugned expenditure has been incurred towards third parties, namely dealers, distributors, advertising agencies, customers, and vendors such as M/s Savita Enterprises. The Assessing Officer himself has not alleged, either in the original assessment proceedings or in the reassessment proceedings, that M/s Savita Enterprises or any other recipient of the payments was an employee of the assessee. On the contrary, it stands accepted that the payments were made to an outsider party for supply of promotional articles and other marketing-related services. Once this foundational fact is accepted, the inevitable conclusion follows that the expenditure cannot be regarded as a consideration for employment, nor can it be deemed as a fringe benefit within the meaning of section 115WB.

11. Further, a plain reading of the proviso to section 115WB(2)(D) reveals that the legislature has consciously carved out exceptions in respect of various categories of sales promotion and publicity expenditure, including advertisement in any print or electronic media, holding of business conventions, sponsorship of events, publication of notices, and distribution of samples. The assessee's expenditure on advertising and publicity, exhibition stall charges, sales commissions, and distribution of promotional articles to dealers and customers squarely falls within these exclusions. Even otherwise, such expenditure is incurred wholly and

exclusively for the purposes of business promotion, and the benefit, if any, accrues to the business of the assessee and not to any employee.

12. The jurisprudence on the subject, as laid down by the Mumbai Tribunal in Kotak Mahindra Old Mutual Life Insurance Ltd. (supra), unequivocally holds that section 115WB is a deeming provision which applies only when the expenditure is in the nature of consideration for employment, and that fringe benefit cannot arise when expenditure is incurred on persons who are not employees. The Hon'ble Delhi High Court in T&T Motors Ltd. (supra) has lucidly explained that where accessories or promotional items are supplied to customers as part of a sales package and the customer has paid the sale consideration, such expenditure cannot be treated as sales promotion or publicity liable to FBT. The underlying principle flowing from these decisions is that FBT is not intended to tax every business expenditure, but only those expenditures which, in substance and reality, represent a benefit to employees.

13. In the present case, not only is there an absence of any material to suggest that any employee benefit is involved, but the documentary evidences placed on record by the assessee amply establish that the expenditure has been incurred in the normal course of marketing business, for promoting sales, enhancing goodwill, and incentivizing dealers and distributors. The Assessing Officer's observation that sufficient documentary evidence was not furnished is belied by the record itself, as the assessee had placed on record

ledgers, sample invoices, notes on the nature of expenditure, and evidences from the vendor M/s Savita Enterprises, which have even been relied upon by the Assessing Officer to justify the applicability of FBT. Having relied upon such material, it does not lie in the mouth of the Revenue to contend that the documentary evidences are insufficient.

14. Viewed in the light of the statutory framework, the factual matrix on record, and the binding judicial precedents, we have no hesitation in holding that the impugned expenditure incurred by the assessee on advertising, publicity, sales promotion, and allied activities does not constitute a fringe benefit within the meaning of section 115WB, and is therefore not liable to FBT under section 115WA. Consequently, the addition made by the Assessing Officer and sustained by the learned CIT(A) on this count is wholly unsustainable in law and on facts, and is liable to be deleted on merits.

15. In so far as the challenge to the validity of reopening under section 147 is concerned, we note that the assessee has fairly urged that the same may be kept open and treated as academic, since the issue has been decided in its favour on merits. In view of our categorical finding that no addition can be sustained on merits, we refrain from adjudicating upon the validity of reopening under section 147, and leave the same open as academic.

16. In the result, the addition made on account of fringe benefit tax is deleted on merits, and the grounds relating to the validity of reopening are treated as academic.

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

Order pronounced on 27th January, 2026.

Sd/-
(MAKARAND VASANT
MAHADEOKAR)

ACCOUNTANT MEMBER

Mumbai; Dated 27/01/2026
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai