

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

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1026 and 1027/Del/2014
AY: 2006-07 and A.Y. 2007-08**

Hindustan Coca-Cola Beverages P.Ltd.
Orchid Centre, 3rd floor
DLF Gold Course Road
Sector 53, Gurgaon 122 002

vs. DCIT, Circle 12(1)
New Delhi

PAN: AAACH 3005 M

(Appellant)

(Respondent)

Appellant by : Shri Sachit Jolly and
Sh. Gautam Swaroop, Advocates

Respondent by : Sh.T.Vasanthan, Sr.D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

Both these appeals are filed by the assessee directed against separate orders of the Ld.CIT(A)-X, New Delhi dt. 11.12.2013 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2006-07 and order dt. 26.12.2013 pertaining to the A.Y. 2007-08, wherein he confirmed the order passed by the Assessing Officer (hereinafter referred to as the AO) u/s 115 WE(3) of the Income Tax Act, 1961 (the Act).

2. Facts in brief:- The assessee, M/s Hindustan Coca-Cola Beverages (P) Ltd. is a company engaged in the business of manufacturing and sale of soft drinks. For the A.Y. 2006-07 it filed its return of Fringe Benefit Tax (FBT) on 30th November,2006 along with the return of income declaring value of fringe benefits at Rs.11,45,84,749/-. Similarly for the A.Y. 2007-

08, the FBT return was filed on 30th October,2007 declaring fringe benefit at Rs.10,19,17,617/-. The A.O. completed the assessment u/s 115 WE(e) of the Act on 20th November,2008 for the A.Y. 2006-07 determining the fringe benefit value at Rs.11,91,48,469/-. For the A.Y. 2007-08 the fringe benefit value was determined at Rs.18,44,29,059/- vide assessment order dt. 24th November, 2009. Aggrieved the assessee carried the matter in appeal without success. Further aggrieved the assessee is before us.

3. We have heard ShriSachit Jolly, the Ld.Counsel for the assessee and Shri T. Vasanthan, the Ld.Sr.D.R. on behalf of the Revenue.

4. We first take up the order for A.Y. 2006-07 in ITA 1026/Del/14. The first issue is addition to the value of fringe benefits, on account of relocation expenses. On a query from the A.O. the assessee had submitted that an expenditure of Rs.2.28 crores under the head 'conveyance, tour and travels' were not offered to FBT, as these were incurred for relocation of employees and for conveyance of the employees from their residence to office and vice versa. It was submitted that a fixed relocation allowance is given by the company, on which tax is deducted at source and therefore the same is not liable to FBT. This explanation was rejected by the A.O.

5. On appeal the Ld.CIT(A) has held that the assessee failed to establish that the reallocation expenses were based on actual expenses incurred by its employees and later reimbursed. He upheld the order of the AO on this issue. The second part of the expenditure under the head conveyance tours and travels relate to the conveyance paid to employees. The case of the assessee is that these expenditure are incurred on transportation of employees from residence to place of work, or office to other place of work or vice versa. This was also dismissed on the ground that the assessee has not furnished adequate details.

6. Before us the Ld.Counsel for the assessee submitted that the entire details were furnished before the A.O. He filed paper books consisting of copies of evidences and correspondence with the A.O. to prove his point. He submitted that the expenditure incurred on FBT was verified by the tax

auditors. He argued that an amount of Rs.1,84,03,112/- was incurred by the assessee towards transportation of house hold goods of their employees, on the transfer from one place to another and argued that this was not covered under the provisions of FBT. He further submitted that an amount of Rs.45,15,502/- was incurred towards conveyance of employees from their residence to the work place and vice versa and this was specifically excluded from FBT under Sub Section(5) of S.115 WB of the Act. He relied on the decision of the Tribunal in the case of TV Today Net Work vs. DCIT (2013) Taxman.com 409 (ITAT Delhi) and submitted that the payment in question was paid to third party for hiring cars, to transport the employees between their place of residence and work and hence these payments are not subject to FBT. He argued that the amount paid to packers and movers and the parties to whom payments were made are third parties and as there is no employer employee relation between the assessee and on such third parties, FBT cannot be levied. Further he referred to the application filed by the assessee under Rule 46A on 25th Feb.,2011 before the Ld.CIT(A) for admission of additional evidences and submitted that the complete break-up of expenses booked under the head 'travelling and conveyance' were furnished to the A.O. along with sample copies of invoices of service providers, showing expenses incurred for shifting house hold goods of employees during their transfer and as well as for, conveyance of employees from residence to place of work and vice versa. The copies of the same are furnished before us. He also referred to the remand report of the A.O. dt. 31.10.2013 placed at page 157 of the paper book and pointed out that the A.O. has accepted that relocation expenses are only reimbursed by the assessee. He pointed out that the entire details and bifurcation were filed before the A.O. and that the contrary finding by the A.O. was a perverse finding.

6.1. For the A.Y. 2007-08 he submitted that under the head "advertising, publicity and sales promotion" an amount of Rs.19,36,77,306/- has been offered to FBT. His case is that the A.O. without considering the submissions of the assessee had determined an amount of

Rs.39,36,47,972/- to be the value of the FBT. Referring to the Ld.CIT(A), he submitted that the details of advertisement expenses were provided and that Ld.CIT(A) records that details of expenses to the extent of 75% were furnished. He vehemently contended that full details were furnished and that copies of vouchers were also filed and the recording by the A.O. is factually incorrect.

7. On the issue of FBT addition under the head travelling and conveyance, he pointed out that the Ld.CIT(A) records that details of an amount of Rs.1.45 cr. were furnished out of total exemption claimed of Rs.1.83 crores. He submitted that the details have not been considered. He filed a paper book and drew our attention to pages 229 to 239 which consists of photo copy of vouchers and other documents to prove his point that all details were in fact furnished. He relied on the many submissions made before the Ld.CIT(A).

8. The Ld.D.R. on the other hand submitted that the assessee has not established with evidence his claims and under those circumstances the lower authorities were right in making these additions. He relied on the order of the A.O. as well as the Ld.CIT(A). Without prejudice to his submissions he submitted that the issues may be set aside to the file of the A.O. for fresh adjudication in accordance with law.

9. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

10. The assessee, in the paper book, furnished copies of invoices and other vouchers along with details of the expenditure as were furnished before the A.O. A perusal of the same demonstrates that in the case of relocation expenses, the expenditure is incurred by the employee and later on the same is reimbursed to the employee by the assessee. It is not a case of the assessee company paying an amount directly to a third party. In the case of conveyance expenditure it is a payment made by the assessee company to a third party and not to the employee. Hence in the case of

relocation expenses, no FBT can be levied, as it is a direct payment to a specific employee against bills submitted by him. In case of conveyance expenditure incurred for travel of the employee from place of residence to place of work and vice versa the payment is made to a third party. Applying the propositions laid down in the case of T.V. Today Net Work Ltd. (supra) to these facts, we have to hold that FBT is not leviable on this payment also. 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.

11. Thus these two issues are adjudicated in favour of the assessee.

12. In the result the appeal for the A.Y. 2006-07 is allowed and the appeal for the A.Y. 2007-08 is allowed in part.

Order pronounced in the Open Court on 20th May, 2016.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 20th May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar