

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.231 OF 2013

BETWEEN:

1. COMMISSIONER OF INCOME
TAX-III, C.R.BUILDING
QUEENS ROAD, BANGALORE.
2. COMMISSIONER OF INCOME
TAX, CENTRAL CIRCLE - 1 (3)
BANGALORE.

... APPELLANTS

(BY SRI.E.I.SANMATHI, ADV.,)

AND:

M/S WIPRO LIMITED
DODDAKANNELLI, SARJAPUR ROAD
BANGALORE - 560 025.

... RESPONDENT

(BY SRI.R.B.KRISHNA, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1951 ARISING OUT OF ORDER DATED 21.12.2012 PASSED IN ITA
NO.24/BANG/2010 FOR THE ASSESSMENT YEAR 2006-07,
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN.

(II) SET ASIDE THE APPELLATE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, BANGALORE IN APPEAL PROCEEDINGS ITA NO.24/BANG/2010 DATED 24.12.2012.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2006-07. The appeal was admitted by a bench of this Court vide order dated 08.07.2013 on the following substantial questions of law:

(i) *Whether in the given facts and circumstances of the case, the tribunal is correct in law in holding that the assessee is not liable for fringe benefit tax in respect of reimbursement of medical expenses to the employees upto Rs.15,000/- without appreciating the fact that such amount is not subject to tax in the hands of the employee inasmuch as the medical expenses in excess of Rs.15,000/- is only considered as perquisites as per proviso (v) to sub section*

(2) Section 7 of I.T.Act?

(ii) *Whether in the given facts and circumstances of the case, the tribunal is correct in law in deleting the addition made by the assessing authority by merely placing reliance on it's own decision in the case of M/s Bosch Ltd. In ITA No.1407/b/2010 dated 07.10.2011 without appreciating the fact that the order of the tribunal has been challenged before this Hon'ble Court which is pending for adjudication?*

(iii) *Whether in the given facts and circumstances of the case, the tribunal is correct in law in holding that the provision of FBT are not applicable in respect of sales promotion including publicity expenses incurred by the assessee during the course of business activities without appreciating the fact that by virtue of deeming provisions of Section 115WB(2), there is no distinction between expenses incurred towards expenses and towards non-employee?*

(iv) *Whether in the given facts and*

circumstances of the case, the tribunal is correct in law in holding that provisions of FBT are not applicable in respect of expenses incurred towards payment of fees, venue hiring charges on trainees enrolled as students in BITS Pillani and scholarship given to the trainees including publicity expenses incurred by the assessee during the course of business activities without appreciating the fact that by virtue of deeming provisions of Section 115WB(2), there is no distinction between expense incurred towards employees and towards non employee?

(v) Whether in the given facts and circumstances of the case, the tribunal is correct in law in holding that the provisions of chapter XII-H are not applicable, without appreciating the fact that by virtue of deeming provisions of Section 115WB(2), there is no distinction between expenses incurred towards employees and towards non employee?

(vi) Whether in the given facts and circumstances of the case, the tribunal is correct in law in deleting the addition made by the assessing authority by merely placing reliance on its own decision in the case of M/s Toyota Kirloskar Motors Pvt. Ltd in ITA No.20/Bang/2011 and 88/B/2011, without appreciating the fact that the said orders have not been accepted by revenue and appeals are pending before this Hon'ble court for adjudication?

2. Facts leading to filing of this appeal briefly stated are that the assessee is engaged in the business of computer software as well as other diverse activities. The assessee filed its return of fringe benefits for the Assessment Year 2006-07 on 29.11.2006 and furnished total value of chargeable fringe benefits of Rs.52,96,15,186/-. During the assessment proceedings under Section 115WE(3) of the Act, various details were sought for, which were furnished by the assessee including the divisions and expenses attributable to the

permanent establishments of the assessee outside India, which were excluded for computing the fringe benefit tax liability. The Assessing Officer by an order dated 30.12.2008 inter alia held that assessee had made reimbursement of medical expenses to its employees and has claimed that the same is exempt upto Rs.15,000/- in the hands of the employees, and therefore, the assessee is not liable to fringe benefit tax. It was further held that exempt portion of the medical reimbursement i.e., upto Rs.15,000/- is liable to fringe benefit tax as it is a fringe benefits under sub Clause(E) of Section 115WB(2) of the Act. Accordingly, 20% of the amount i.e., Rs.5,45,59,077/- was held as chargeable value of fringe benefit. Being aggrieved, the assessee preferred an appeal. The Commissioner of Income Tax (Appeals) by an order dated 10.11.2009 dismissed the appeal preferred by the assessee. The assessee thereupon approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for

short) by filing an appeal. The tribunal by an order dated 21.12.2012 inter alia held that payments made by the employees to the approved hospitals and the subsequent reimbursement of such payments to the employees by the employer do not attract fringe benefit tax. It was further held that treating the payment towards fees, venue hiring charges etc for the trainees enrolled as students of Birla Institute of Technology and Science and treating the scholarships given to the trainees is covered by decision of the tribunal in the case of M/s Toyota Kirloskar Motors Pvt. Ltd and the same is not liable to fringe benefit. It was also held that expenses incurred by the assessee towards repairs, running and maintenance of motor cars are concerned, since, there is no material on record as to what extent the cars were used for personal or professional use, therefore, the matter was remitted to the Assessing Officer for reconsideration. It was further held that the issue with regard to depreciation on motor cars was also

remitted to the Assessing Officer. In the result, the appeal preferred by the assessee was partly allowed. In the aforesaid factual background, the revenue has approached this court.

3. Learned counsel for the revenue submitted that the tribunal has set aside the disallowance in respect of reimbursement of medical expenses granted by the assessee to its employees by ignoring the fact that the same is excluded as per proviso to viii of Section 17(2) of the Act read with Rule 3. It is also submitted that as per Clause 6 expenses relating to medical treatment incurred by the employer on its employees outside India is also excluded. Thus, it is evident that fringe benefit is excluded as per Section 17(2) of the Act. It is also argued that the expression 'prerequisite' is defined under Section 17(2) and proviso (v) clearly specify the definition of prerequisite would not include any sum paid by an employer in respect of any expenditure actually incurred by an employee on his

medical treatment or treatment of a member of his family, if such sum was not in excess of Rs.15,000/-. It is also argued that only effect of proviso is that reimbursement amount in excess of Rs.15,000/- would be taxable as part of salary, whereas, amount of Rs.15,000/- and less would not be taxable in the hands of employees. Therefore, it is submitted that untaxed amount is taxed as fringe benefits in the hands of the employer. It is also urged that expenses incurred on bundling of the products is not in the nature of purchase and not cost of sales promotion. Therefore, Assessing Officer has rightly added 20% of the total expenses incurred by provisions of Section 115WB(2D) of the Act. It is also submitted that as per sub-Section (2) of Section 115WB the fringe benefit tax is chargeable even if there is no employer- employee relationship and if expenses have been incurred for the purposes specified in Clause (A) to (Q), which includes Clause (D) of Section 115WB.

4. It is also urged that Assessing Officer has rightly rejected scholarship expenses incurred by the assessee and in the light of circular No.8/2005, fringe benefit tax is paid on expenditure incurred for payment of the purposes of scholarship irrespective of the fact whether recipient is an employee or his relative or any other person. It is also urged that under Section 115WB(3) of the Act perquisite in respect of which tax is paid or payable is exempt and since, stipend in the hands of the employee is not taxable, fringe benefit tax is attracted. In this connection, our attention has been invited to Section 115WB of the Act. In support of aforesaid submissions, reliance has been placed on decisions in '**ESKAYEF LTD. VS. CIT', 245 ITR 116, 'R & B FALCON (A) PVT. LTD. VS. CIT', 301 ITR 309** and decisions of Advance Rulings Authority in cases of **R & B FALCON (A) PTY LTD., IN RE, 289 ITR 369 and SINGAPORE TOURSIM BOARD, IN RE, 307 ITR 34.**

On the other hand, learned counsel for the

assessee submitted that fringe benefit tax is a tax of expenditure and the expenditure itself can be divided into three categories viz., business expenditure, expenditure on employees and other expenses on employees. It is further submitted that in case there is no employer-employee relationship, the provisions of fringe benefit tax will not be attracted. It is also submitted that proviso (v) to Section 17(2) of the Act exempts medical reimbursement upto Rs.15,000/- means that in absence of such proviso entire reimbursement would be taxable as prerequisite under Section 17(2) and therefore, out of the purview of fringe benefit tax. It is also submitted that the assessee in the course of sales of fast moving customer goods bundle has paid for bundled product indirectly and the same is not accessible to fringe benefit tax. While inviting our attention to a letter of enrollment for post graduate courses, a student has been enrolled who is not an employee of the assessee. The payment was made to

the BIDS Pillani for expenses and BIDS Pillani is not the employee of the assessee. It is also urged that expenses incurred by the assessee was not towards scholarship but in fact expenses incurred at BIDS Pillani, therefore, the provisions of fringe benefit tax do not apply to the fact situation of the case. In support of aforesaid submissions, reliance has been placed on decisions in **'COMMISSIONER OF INCOME-TAX-VI VS. M/S GRASIM INDUSTRIES LTD.'**, ITA NO.2399/2013 DATED 02.02.2016, **'COMMISSIONER OF INCOME-TAX VS. TATA CONSULTANCY SERVICES LTD.'**, (2015) 374 ITR 112 (BOM), **'PRINCIPAL COMMISSIONER OF INCOME TAX-II VS. M/S ARISTO PHARMACEUTICALS P. LTD.'**, IN ITA NO.1967/2017 DATED 23.01.2020 and **'T & T MOTORS LTD. VS. ASSISTANT COMMISSIONER OF INCOME TAX'**, IN ITA NO.899/2010 DATED 24.01.2012.

5. We have considered the submissions made on both sides and have perused the record. Proviso (v) to Section 17(2) of the Act defines the expression 'perquisite' and provides that perquisite would not include any sum paid by an employer in respect of any expenditure actually incurred by an employee on his medical treatment or treatment of any member of his family if such sum was not in excess of Rs.15,000/-. The effect of the proviso is that reimbursement of the amount in excess of Rs.15,000/- would be taxable as part of the salary in the hands of the employee, whereas, amount less than Rs.15,000/- would not be taxable in the hands of the employee. However, such reimbursement nevertheless would perquisite as defined under the Act but would remain untaxed in the hands of the employees and therefore, untaxed amount is taxed as fringed benefits in the hands of the employer. Thus, if the medical reimbursement exceeds Rs.15,000/- relating to unapproved hospital, then under Section

17(1) of the Act the employees are taxed beyond Rs.15,000/- and if Rs.15,000/- which is exempt in the hands of the employees is not liable for fringe benefit tax but over and above the aforesaid amount is liable for fringe benefit tax.

6. So far as issue pertaining to expenses incurred by the assessee on bundling of product is concerned, it is pertinent to note that effectively the bundling is not done free of cost as customer pays for the bundled product indirectly. The Delhi High court while considering the aforesaid issue in the case of T & T Motors Ltd. supra has held that expenses incurred in bundling of products are not exigible to levy of fringe benefit tax. It has further been held that expenditure for the purpose of business not connected to employees cannot be brought to tax under the fringe benefit tax. Therefore, we hold that the expenses incurred by the assessee on bundling of the product is not exigible to fringe benefit tax.

7. The assessee has also incurred expenses for sponsoring Science Graduates to Post Graduate courses. From perusal of the document placed on record, it is evident that the assessee has enrolled the student in computer applications in the academy of the assessee viz., Wipro Academy of Software Excellence. The student is not an employee of the company and the payment was made to the Birla Institute of Technology for expenses, thus, the expenses incurred by the assessee in respect of payment made to Birla Institute of Technology for imparting training to the students cannot be subjected to fringe benefit tax.

8. In PRINCIPAL COMMISSIONER OF INCOME TAX VS. ARISTO PHARMACEUTICALS P. LTD., Bombay High Court has held that in case, there is no employer-employee relationship between the assessee and to persons in respect of whom the expenditure is incurred, the same cannot be subjected to fringe benefit tax.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in aforesaid terms.

Accordingly, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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