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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 21.08.2023*

\+ **ITA 1448/2018**

THE PR. COMMISSIONER OF INCOME TAX-4 ..... Appellant
Through: Mr Sanjeev Menon, Standing Counsel.

versus

HINDUSTAN COCA COLA BEVERAGES PVT. LTD.
..... Respondent
Through: Mr Sachit Jolly with Ms Disha Jham and Ms Soumya Singh, Advocates.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE ANISH DAYAL
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is preferred against the order of the Income Tax Appellate Tribunal [in short, "Tribunal"] dated 18.06.2018 concerning Assessment Year (AY) 2008-09.

1.1 *Via* the impugned order, the Tribunal disposed of the appeals filed by the appellant/revenue, as well as, by the respondent/assessee against the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 25.03.2013.

1.2 The operative directions of the Tribunal are contained in paragraph 8. For the sake of convenience, the same are extracted hereafter:

> *"8. We have carefully considered the rival contentions. With respect to the total expenditure of Rs.46.92 crores the assessee has given a detailed break-up which shows that these expenditure are not ITAs. 3273 & 3691 (Del) of 2013. Hindustan Coca Cola Beverages. chargeable to tax of fringe benefit. The complete chart is placed at page Nos. 3 and 4 of the paper book. According to that chart most of the expenditure are advertisements, banners, newspapers, printed materials etc. on which FBT is not chargeable. The assessee has himself stated that conference charges have already been considered in return of FBT including dealers' conference expenses. Further the scholarship was also offered for taxation. As per the page Nos. 3 and 4 of the paper book, the learned Departmental Representative could not controvert that how the decision of the CIT (Appeals) in deleting the addition partly was erroneous. Further Co-ordinate Bench has held that Fringe Benefit Tax is not leviable on channel placement charges paid to cable operators by T.V. Channel Companies. Therefore, respectfully following the decision of the Co-ordinate Bench, we also hold that addition upheld by the learned CIT (Appeals) deserves to be deleted. Though assessee has submitted the sample invoices, but they show that on these expenditure, fringe benefit tax is not chargeable. In view of this, we dismiss ground NO.1 of the appeal of the Revenue and allow ground No. 2 of the appeal of the assessee."*

2. As would be evident, the Tribunal has dismissed the appeal with regard to the issue in hand, i.e., levy of fringe benefit tax (FBT) on expenditure claimed by the respondent/assessee concerning advertisement. The consequent effect of this direction is that the respondent's /assessee's appeal concerning the same issue was allowed.

2.1 To appreciate this aspect of the matter, one would have to advert to the order passed by the CIT(A) on 25.03.2013, which was carried in appeal

before the Tribunal. The relevant part of the CIT(A)'s order reads as follows:

> *"7.3 Regarding disallowance out of advertisement, the Ld. Counsel pleaded that [it] was not possible to produce all bills/ vouchers for verification as the same were voluminous and maintained at different branches. It was submitted that an amount of 46.92 crores was not included under the head "Sales Promotion including publicity" for the reasons that out of this an amount of 'Rs. 50,16,178/- (Conference), Rs.l,52,000(Scholarship) and Rs. 9,90,000(Traffic violation) were wrongly booked here and the remaining expense of Rs.46,31,14,793/- were exempt being covered under the proviso to Clause D of Section 115WB(2). On careful consideration of the facts of the case and on perusal of the remand report and the additional evidence furnished by the appellant before me, I hold that since regarding the balance amount in respect of the advertisement expenses the appellant could not furnish full details before me and the fact that only the sample bills amounting to RS.9,02,50,971/- were furnished which represent 20% of the expenses, after allowing the same out of balance amount, 50% is disallowed and accordingly, held as taxable. The AO is directed to recompute the disallowance accordingly."*

3. Mr Sachit Jolly, learned counsel, who appears on behalf of the respondent/assessee, has placed before us the remand report dated 03.05.2012 submitted by the Assessing Officer (AO) before the CIT(A). The relevant extract from the remand report on which reliance is placed by Mr Jolly is extracted hereafter:

> *"Similarly, for Advertisement expenses, though the assessee has classified the expenses and has produced the table showing the party name of the service providers and amount, which is not liable for FBT. In contention of the*

same, some bills were produced during the verification. Firstly, complete bills were not produced. The AR of the assessee stated that complete bills cannot be produced, since those are voluminous and maintained at different branches. The bills produced on sample basis were test checked. Some bills suggest that expenses were incurred for glow sign board, advertisement on walls, advertisements by print media etc. However, in absence of complete details, concrete classification cannot be made."

4. A perusal of this extract would show that the respondent/assessee claimed that it may not be able to produce all bills, as the record was voluminous and maintained in different branches. It is in this context that the aforementioned direction was issued by the CIT(A).

5. Although Mr Jolly says that the very same extract would show that sample bills were produced and no defect whatsoever was found with those bills, he cannot but accept the fact that Assessing Officer [in short, "AO"] was entitled to examine each bill which the respondent/assessee, due to the fact that the record was voluminous and maintained in various branches, did not produce.

5.1 It is in this regard, the respondent/assessee says that the CIT(A) had arrived at a solution, by giving the respondent/assessee benefit to the extent that the bills were produced. As regards the balance amount, 50% was disallowed.

6. Mr Jolly says, that even though the Tribunal has given complete benefit of the expenditure claimed by the respondent/assessee in terms of 115WB read with Section 115WC of the Income Tax Act, 1961 [in short, "the Act"], the respondent/assessee would be quite satisfied if the order of the CIT(A) is sustained instead.

7. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of the appellant/revenue, says that this may perhaps be the best outcome, given the fact that this is the matter which pertains to AY 2008-09 and even if this Court were to remand the matter to the AO, it will be difficult for the respondent/assessee to produce the record.

7.1 Mr Menon says that since substantial number of bills were produced by the respondent/assessee *qua* which no defect was found, this may be a reasonable outcome in the present appeal.

8. We tend to agree with the submissions made by Mr Menon and Mr Jolly. Therefore, the impugned order is set aside, and instead the order passed by the CIT(A) is restored.

9. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

ANISH DAYAL, J

AUGUST 21, 2023 / tr