IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.3793/Del./2010
(ASSESSMENT YEAR : 2006-07)

ITA No.4851/Del./2010
(ASSESSMENT YEAR : 2007-08)

ITA No.3261/Del./2011
(ASSESSMENT YEAR : 2008-09)

DCIT, Circle 9 (1), New Delhi.	vs.	M/s. Steel Authority of India Ltd., Ispat Bhawan, Lodhi Road, New Delhi.

(PAN : AAACS7062F)

ITA No.3285/Del./2010
(ASSESSMENT YEAR : 2006-07)

ITA No.4689/Del./2010
(ASSESSMENT YEAR : 2007-08)

ITA No.2699/Del./2011
(ASSESSMENT YEAR : 2008-09)

M/s. Steel Authority of India Ltd., Ispat Bhawan, Lodhi Road, New Delhi.	vs.	DCIT, Circle 9 (1), New Delhi.

(PAN : AAACS7062F)

ITA No.4928/Del./2012
(ASSESSMENT YEAR : 2006-07)

ITA No.4929/Del./2012
(ASSESSMENT YEAR : 2007-08)

ACIT, Circle 9 (1), New Delhi.	vs.	M/s. Steel Authority of India Ltd., Ispat Bhawan, Lodhi Road, New Delhi. **(PAN : AAACS7062F)**
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : S/Shri M.P. Rastogi & P.N. Shastri, Advocates
REVENUE BY : Shri S.S Rana, CIT DR

Date of Hearing : 27.09.2018
Date of Order : 02.11.2018

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Sinc common questions of facts and law have been raised in all he aforesaid cross appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, DCIT, Circle 9 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeals being ITA Nos.3793/Del./2010, 4851/Del./2010 and 3261/Del./2011, sought to set aside the impugned order dated 30.03.2010, 18.08.2010 & 25.03.2011 passed by Ld. CIT (Appeals)-XII, New

Delhi qua the assessment years 2006-07, 2007-08 & 2008-09 respectively on the grounds inter alia that:-

"ITA NO.3793/DEL/2010 (AY 2006-07)

1. Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in deleting the addition of Rs.1068.75 lakh made by the AO to the value of Fringe Benefits on account of medical reimbursement expense.

2. Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in deleting the addition of Rs. 797.13 lakh made by the AO to the value of Fringe Benefits on account of maintenance expenses of Township of the assessee.

3. Ld. Commissioner of Income Tax (Appeals) erred, in law and on the facts and circumstances of the case, in directing the AO to allow 50% of Rs.2077.14 lakh which was included by the AO in the value of Fringe Benefits on account of Medical expenses for treatment in Hospitals."

"ITA NO.4851/DEL/2010 (AY 2007-08)

1. On the facts and circumstances of the case, the Ld. CIT (A) erred in law as well as on merits in deleting the addition of Rs.467.40 lacs being 50% of Rs.934.81 lacs made by the AO to the value of Fringe Benefits on account of medical reimbursement expense.

2. On the facts and circumstances of the case, the Ld. CIT (A) erred in law as well as on merits in deleting the addition of Rs.1684.17 lacs being 50% of Rs.3368.35 lacs made by the AO to the value of Fringe Benefits on account of medical expenses for treatment in hospitals."

"ITA NO.3261/DEL/2011 (AY 2008-09)

1. On the facts and circumstances of the case, the Ld. CIT (A) erred in law and merit of the case in directing the AO to allow relief of Rs.385.24 lacs (50%) out of total medical reimbursement expenses of Rs.770.48 lacs.

2. On the facts and circumstances of the case, the Ld. CIT (A) erred in law and merit of the case in directing the AO to allow relief of Rs.2028.96 lacs (50%) out of total expenses of Rs.4057.92 lacs on account of treatment in approved hospitals."

3. The appellant, Steel Authority of India Limited (hereinafter referred to as 'the assessee') by filing the present appeals being ITA Nos.3285/Del./2010, 4689/Del./2010 & 2699/Del./2011, sought to set aside the impugned order dated 30.03.2010, 18.08.2010 & 25.03 2011 passed by Ld. CIT (Appeals)-XII, New Delhi qua the assessment years 2006-07, 2007-08 & 2008-09 respectively on the grounds inter alia that:-

"ITA NO.3285/DEL/2010 (AY 2006-07)

1. The CIT [A] should have deleted the whole of the addition of Rs.2077.14 lacs on account of payment to referral hospitals on reference by Hospitals run by the company instead of deleting only 50% despite it being excluded by Section 115WB[E] read with Section 17[2]. [Para 2-pages 3-4 of order]

2 The authorities below have erred in mixing up the provisions regarding tax exemption limit of Rs 15,000 for domiciliary treatment with hospitalization

charges covered by Section 17[2] read with Rule 3A and arriving at erroneous conclusions / decisions."

"ITA NO.4689/DEL/2010 (AY 2007-08)

1. The CIT [A] should have deleted the whole of the addition of Rs.4303.16 [934.81 + 3368.35] lacs on account reimbursement of medical bills and payment of referral hospitals on reference by Hospitals run by the company instead of deleting only 50% despite it being excluded by Section 115WB[E] read with Section 17[2]. [Para 3-page 3 of order]

2 The authorities below have erred in mixing up the provisions regarding tax exemption limit of Rs.15,000 for domiciliary treatment with hospitalization charges covered by Section 17[2] read with Rule 3A and arriving at erroneous conclusions / decisions.

3. That the CIT [A] has erred in confirming the action of the AO treating the Maintenance of Townships [8 Nos.] expenses of RS.863.43 lakhs as Employee Welfare Expenses for the purposes of Fringe Benefit Tax ignoring the fact that the factories of the company are huge and that they are deemed as townships for which the company is responsible."

"ITA NO.2699/DEL/2011 (AY 2008-09)

1.1 The CIT [A] should have deleted the whole of the addition of Rs.4828.40 [770.48 + 4057.92] lacs on account reimbursement of medical bills and payment to referral hospitals on reference by Hospitals run by the company instead of deleting only 50% despite it being excluded by Section 115WB[E] read with Section 17[2]. [Para 4.3-page 4 of order]

1.2 The authorities below should have accepted the illustrative evidences submitted on test check basis in view of voluminous nature of evidences.

2 The authorities below have erred in mixing up the provisions regarding tax exemption limit of Rs.15,000 for domiciliary treatment with hospitalization charges covered by Section 17[2] read with Rule 3A and arriving at erroneous conclusions / decisions.

3. That the CIT [A] has erred in confirming the action of the AO treating the Maintenance of Townships [8 Nos.] expenses of Rs.1233.36 lakhs as Employee Welfare Expenses for the purposes of Fringe Benefit Tax ignoring the fact that the factories of the company are huge and that they are deemed as townships for which the company is responsible."

4. The appellant, ACIT, Circle 9 (1) New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeals being ITA Nos.4928/Del./2012 & 4929/Del./2012, sought to set aside the impugned order both dated 13.06.2012 passed by Ld. CIT (Appeals)-XII, New Delhi, deleting the penalty orders both dated 30.09.2011 passed u/s 271(1)(d) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment years 2006-07 & 2007-08 respectively, on the grounds inter alia that :-

"On the facts and circumstances of the case, the ld. CIT (A) erred in law in deleting the penalty imposed by the AO under section 271(1)(d) amounting to Rs.69,92,000/- in AY 2006-07 and Rs.2,02,97,000/- in AY 2007-08."

5. Briefly stated the facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are : the assessee company is engaged in the manufacture, process, sale and export of

iron and steel of various grades and also in the field of mining, generation and distribution for self of electricity through thermal power stations, processing of coal into coke which generates by-products like tar coal, phenol etc. and manufacture of refractors and chemical like calcium nitrate etc. AO has disallowed medical reimbursement expenses, medical expenses for treatment in approved hospitals and township expenses on the ground that no such amount is being taxed as per requisite in the hands of employees and as such is deemed as Fringe Benefit u/s 115WE of the Income-tax Act, 1961 (for short 'the Act').

6. Assessees carried the matter by way of appeals before the ld. CIT (A) who has partly allowed the appeals by directing the AO to allow 50% of the value of FBT on account of medical expenses for treatment in the approved hospital in AYs 2006-07, 2007-08 & 2008-09 as against 100% disallowance made by the AO and has deleted the entire addition on account of medical reimbursement on account of AY 2006-07 and deleted 50% of the addition made by the AO in AYs 2007-08 & 2008-09.. Feeling aggrieved, both the Revenue as well as the assessee have come up before the Tribunal by way of filing the present appeals.

7. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 IN REVENUE'S APPEAL
ITA NO. 3793/Del./2010 (AY : 2006-07)
ITA No.4851/Del./2010 (AY : 2007-08)
ITA No.3261/Del./2011 (AY : 2008-09)

GROUND NO.3 IN REVENUE'S APPEAL
ITA NO. 3793/Del./2010 (AY : 2006-07)

GROUND NO.2 IN REVENUE'S APPEAL
ITA No.4851/Del./2010 (AY : 2007-08)
ITA No.3261/Del./2011 (AY : 2008-09)

GROUNDS NO.1 & 2 IN ASSESSEE'S APPEAL
ITA NO.3285/DEL/2010 (AY 2006-07
ITA No.4689/Del./2010 (AY : 2007-08)

GROUNDs NO.1.1, 1.2 & 2 IN ASSESSEE'S APPEAL
ITA No.2699/Del./2011 (AY : 2008-09)

8. AO has disallowed reimbursement of medical expenses by invoking the provisions contained u/s 17(2)(vi) of the Act and held the same taxable in the hands of employees subject to certain exemptions and held that the amount taxable in the hands of the employees was not subjected to FBT u/s 115WE of the Act. It is contended by the ld. AR for the assessee that the said medical reimbursement expenses are taxable in the hands of employees and

as such are not includible for FBT and relied upon the decisions rendered by coordinate Bench of the Tribunal in ***(i) Godrej Properties Ltd. Vs. Addl.CIT – 135 TTJ 426 (Mum.); (ii) Vijay Bank vs. JCIT – 14 taxman.com 65 (Bangl.); & (iii) Bosch Ltd. vs. DCIT – 15 taxman.com 187 (Bang.)***.

9. Before proceeding further provisions contained u/s 17(2)(vi) of the Act are extracted for ready perusal as under :-

> ***"17. For the purposes of sections 15 and 16 and of this section,—***
> ***…….***
> ***(2) "perquisite" includes—***
> ***…….***
> ***(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;***
> ***…….***
> ***(v) any sum payable by the employer, whether directly or through a fund, other than a r ognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund established under section 3G of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or, as the case may be, section 6C of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), to effect an assurance on the life of the assessee or to effect a contract for an annuity;***
>
> ***(vi) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.***
>
> ***Explanation.—For the purposes of this sub-clause,—***
>
> ***(a) "specified security" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;***
>
> ***(b) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for***

consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(c) the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares;

(d) "fair market value" means the value determined in accordance with the method as may be prescribed;

(e) "option" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;"

10. In AY 2006-07, ld. CIT (A) has deleted the entire addition made by AO to the value of FBT on account of medical reimbursement expen es of 100% in AY 2006-07 and 50% in AYs 2007-08 & 2008-09 on the ground that since the reimbursement of medical expenses is taxable in the hands of the employees, the same cannot be includible for FBT. Likewise, ld. CIT (A) deleted 50% of the addition made by the AO in the value of FBT on account of medical expenses for treatment in hospital in all three assessment years.

11. So far as question of addition made by AO/CIT (A) to the value of FBT on account of medical reimbursement expenses is concerned, when undisputedly reimbursement of medical expenses

are prerequisite in the hands of the employees, the same cannot be treated as FBT in the hands of the assessee.

12. Identical issue has been dealt with by the coordinate Bench of the Tribunal in ***Vijaya Bank vs. JCTI – (2010) 14 taxmann.com 65 (Bangalore-Trib)*** in favour of the assessee by returning following findings :-

> ***"3.2 The learned counsel for the assessee, apart from reiterating the submissions made before the Income Tax Authorities, also relied on the order of the Mumbai Tribunal in the case of Godrej Properties Ltd. v Addl. CIT. The learned counsel for the assessee referred to the Medical Benefit Scheme of the assessee and pointed out that for availing the benefit, the employees can submit the actual medical bill and can claim reimbursement of the same. The learned counsel for the assessee referred to the budget speech of the Finance Minister delivered on 28th February, 2005 reported in 273 ITR (St.) 25, specifically to para 160. He also referred to the Memorandum explaining the provisions in Finance Bill 2005 and submitted that, it is very clear that where perquisites were directly attributed to the employees, the same would continue to be taxed in the hands of the employees in accordance with the existing provisions of section 17(2) of the I T Act.***
>
> ***3.3 On the other hand, the learned DR supported the orders of the Income Tax Authorities.***
>
> ***3.4 We have heard the rival submissions and read the relevant provisions. At the relevant time, section 17(2) proviso (v) reads as follows:-***
>
> > ***"(v) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family (other than the treatment referred to in clauses (i) and (ii); so, however, that such does not exceed fifteen thousand rupees in the previous year;"***

This sub-clause treats the expenditure actually incurred by the employee on medical treatment for himself or his family, and which is paid by the employee, in excess of Rs.15,000/- would be a perquisite which would be taxable as salary. It is clear that reimbursement of medical expenditure as in the case referred to above, is not chargeable to tax as a perquisite if the amount does not exceed Rs.15,000/-.

3.5 Section 115WB(3) reads as follows:-

> ***"For the purposes of sub-section (1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee (or any benefit or amenity in the nature of free or subsidized tran port or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence)" (Emphasis ours).***

3.6 In the budget peech at para 160 reported in 273 ITR (St.) 25, at page 56, it is observed as follows:-

> ***"I have looked into the present system of taxing perquisites and I have found that many perquisites are disguised as fringe benefits, and escape tax. N ither the employer nor the employee pays any tax on these benefits which are certainly of considerable material value. At present where the benefits are fully attributable to the employee they are taxed in the hands of the employee; that position will continue. In addition, I now propose that where the benefits are usually enjoyed collectively by the employees and cannot be attributed to individual employees, they shall be taxed in the hands of the employer".***

3.7 In the memorandum explaining the proviso to the Finance Bill, it is stated as follows:-

> ***"Therefore, it is proposed to adopt a two pronged approach for the taxation of fringe benefits under the Income-tax Act. Perquisites which can be directly attributed to the employees will continue to be taxed in their hands in accordance with the existing provisions of section 17(2) of the Income Tax Act and***

subject to the method of valuation outlined in rule 3 of the Income Tax Rules. In cases, where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, it is proposed to levy a separate tax known as the fringe benefit tax on the employer on the value of such benefits provided or deemed to have been provided to the employees".

3.8 From the above, it is clear that where perquisites /benefits which are fully attributable to the employee and are taxed in their hands, would be continued to be taxed under the existing provisions of section 17(2) of the Act. Only in case where the benefits are usually enjoyed collectively by the employees and cannot be attributed to an individual employee, they shall be taxed in the hands of the employer. In the instant case, the attribution of personal benefit directly to an employee does not pose a problem or is a case where it is not feasible to tax the benefit in question in the hands of the employee.

3.9 In sub-section (3) of section 115WB, it is made clear that section 115WB(1)(a) does not include such perquisite in respect of which tax is paid or payable by the employees. In the instant case, the medical reimbursement is taxable but for the exemption provided in the proviso (v) to section 17(2) up to an amount of Rs.15,000/-. Merely by grant of exemption, it cannot be said that the tax is not payable. Therefore, a specific item of perquisite, which is normally taxable in the hands of individual employee, cannot be subjected to FBT, only for the reason that the same is exempt in the hands of the employees. If the above proposition is not accepted, it leads to an anomalous situation. For example, when the medical expenditure is above Rs.15,000/- and the overall income of the individual employee is less than the minimum amount not chargeable to tax; whether the medical expenses in excess of Rs.15,000/- could be subjected to FBT, only on account of the fact that no income tax was paid by the employee. The answer to the above query, in our view, would be in the negative. Likewise, when an item which is to be treated as a perquisite is exempt in the hands of the individual employee, the same, according to us, could not be subjected to FBT. In taking the above view, we are also fortified by the order of

the Mumbai Tribunal in the case of Godrej Properties Ltd., which has decided an identical issue.

3.10. In the result, ground nos. 2 to 4 are allowed."

13. So, following the decision rendered by the coordinate Bench of the Tribunal in ***Vijaya Bank*** (supra) which is squarely applicable to the facts and circumstances of the case, we are of the considered view that medical reimbursement expenses is prerequisites in the hands of employees and is taxable as such, even if medical expenses are in excess of Rs.15,000/- and as such cannot be subjected to FBT because once the item as prerequisites is exempted in the hands of individual employee, the same cannot be subjected as FBT So, ld. CIT (A) has rightly deleted the addition made by the AO in AY 2006-07 to the value of FBT on account of medical reimbursement expenses. However, the ld. CIT A) has erred in deleting the addition in AYs 2007-08 & 2008-09 on account of medical reimbursement expenses to the extent of 50% only. For AYs 2007-08 and 2008-09 also entire addition is liable to be deleted. So, ground no.1 of AYs 2006-07, 2007-08 & 2008-09 in Revenue's appeal are determined against the Revenue.

14. So far as question of deleting the addition of 50% in the value of FBT on account of medical expenses for treatment in

approved hospitals for AYs 2006-07, 2007-08 & 2008-09 is concerned, undisputedly the AO made this addition on the ground that the assessee has failed to bring on record any detail or evidence that all the reimbursement in each case is above Rs.15,000/- and that no evidence has been brought on record that the amount of Rs.2077.14 lacs has been spent for treatment in approved hospital and that this amount has been taxed in the hands of employees and thereby treating the expenses as deemed fringe benefit by invoking the provisions contained u/s 115WB(2)(E) of the Act.

15. It is not in dispute that only the amounts above Rs.15,000/- incurred by the assessee for treatment in the approved hospitals is taxed in the hands of employees. When we consider this fact in the light of the facts and circumstances that the assessee is a Government undertaking having employees of more than 150,000 and all the expenses are subject to audit and no amount for treatment in approved hospital can be spent except under the Rules framed by the Department as per law prevalent at the time of such payment, then entire expenses cannot be disallowed.

16. Ld. CIT (A) has allowed 50% of the amount by considering all these facts. We are of the considered view that when expenses

incurred by employees less than Rs.15,000/- are reimbursed and only expenses exceeding RS.15,000/- for treatment in the approved hospital as admissible under the Act are incurred by the assessee, the same are pre-requisites in the hands of employees. Even if the expenses are in excess of Rs.15,000/- the same cannot be subjected to fringe benefit merely because of the fact that detail or evidence has not been brought on record.

17. So, keeping in view the aforesaid facts we allow 85% of the amount incurred by the assessee on account of medical expenses for treatment in the approved hospitals for the reason that possibility of 15% of such cases being overlooked cannot be ruled out for AYs 2007-08 & 2008-09. Even otherwise, the ld. Representative for the assessee has shown his inability to produce old record for verifications. So, ground no.3 in ITA No 3793/Del./2010 (AY : 2006-07) and ground no.2 in ITA No.4851/Del./2010 (AY : 2007-08) & ITA No.3261/Del./2011 (AY : 2008-09) in Revenue's appeal are determined against the Revenue. Grounds No.1 & 2 in ITA NO.3285/Del/2010 (AY 2006-07) and ITA No.4689/Del./2010 (AY : 2007-08) and Grounds No.1.1, 1.2 & 2 being ITA No.2699/Del./2011 (AY : 2008-09) in assessee's appeal are partly determined in favour of the assessee.

GROUND NO.2 IN REVENUE'S APPEAL
ITA NO. 3793/Del./2010 (AY : 2006-07)

GROUND NO.3 IN ASSESSEE'S APPEAL
ITA No.4689/Del./2010 (AY : 2007-08)
ITA No.2699/Del./2011 (AY : 2008-09)

18. Undisputedly, assessee has been maintaining townships situated in the vicinity of its plants all over the country. It is also not in dispute that in the township constructed and maintained by the assessee are being used by its employees only.

19. AO made addition to the value of FBT on account of maintenance expenses of township of the assessee on the ground that no such amount is being taxed as prerequisites in the hands of employees and treated the same as deemed FBT u/s 115WB(2)(E). The ld. CIT (A) confirmed the addition in AYs 2007-08 & 2008-09 but deleted this addition in AY 2006-07 on the ground that maintenance and administrative township expenses are necessity and no a benefit being given to the employees as townships are located in remote area and as such cannot be taxed in the hands of the assessee to the value of FBT.

20. Ld. AR for the assessee submitted that all these expenses are not incurred by the assessee in the capacity of employer rather in the capacity of landlord of the townships and as such assessee is under obligation to maintain the townships. Undisputedly, these

expenses have been debited as separate township expenses and not debited in the employees welfare account. This fact has been stated at Bar by the ld. AR for the assessee.

21. When, undisputedly, townships constructed and maintained by the assessee are situated in the remote area and its roads and gardens are to be maintained by the assessee on which no house-tax is levied by the local authorities, the same cannot be treated to have been incurred by the assessee in the capacity of an employer and as such, cannot be treated as part of the FBT.

22. Moreover when the assessee is responsible for upkeep and maintenance of the townships, the same cannot be said to have erected for the welfare of the employees rather it is a necessity for the assessee to run the business in the remote areas as well as to enable the employees to serve in the remote places. So, we are of the considered view that in AY 2006-07, the ld. CIT (A) has rightly deleted the addition made in the value of FBT on account of maintenance expenses of townships. But ld. CIT (A) in AYs 2007-08 & 2008-09 has erred in confirming the addition on this account, hence ordered to be deleted. Consequently, Ground No.2 in ITA No. 3793/Del./2010 (AY : 2006-07) in Revenue's appeal is determined against the Revenue and Ground No.3 in ITA

No.4689/Del./2010 (AY : 2007-08) & ITA No.2699/Del./2011 (AY : 2008-09) in assessee's appeal is determined in favour of the assessee.

ASSESSEE'S APPEAL
ITA No.4928/Del./2012 (AY: 2006-07)
ITA No.4929/Del./2012 (AY: 2007-08)

23. Briefly stated the facts necessary for adjudication of the controversy at hand are : on the basis of completed assessment u/s 115WE (3) at Rs.5975.11 lacs & Rs.6090 28 lacs after making addition/disallowances to the returned income (FBT) at Rs.1038.57 lacs & Rs.934.81 lacs for AYs 2006-07 & 2007-08 respectively, penalty proceedings were initiated u/s 271(1)(d) of the Act that the assessee has failed to bring on record the details for payment of medical reimbursement expenses of Rs.1038.75 lacs & Rs.934.81 lacs for AYs 2006-07 & 2007-08 respectively on account of medical expenses for treatment in approved hospitals to the tune of Rs.2077.14 lacs & RS.3368.35 lacs for AYs 2006-07 & 2007-08 respectively; and to the tune of Rs.797.13 lacs & Rs.863.43 lacs for AYs 2006-07 & 2007-08 respectively on account of township expenses; and consequently 20% of 1038.75 lacs i.e. Rs.207.71 and Rs.934.81 lacs i.e. Rs.196.96 lacs for AYs 2006-07 & 2007-08 respectively on account of medical reimbursement expenses; 20%

on account of Rs.2077.14 lacs i.e. Rs.415.43 lacs & Rs.3368.35 i.e. Rs.673.67 lacs for AYs 2006-07 & 2007-08 respectively on account of medical expenses for treatment in approved hospitals; and Rs.797.13 lacs & Rs.863.43 lacs for AYs 2006-07 & 2007-08 respectively on account of township expenses have been treated as taxable FBT by the AO.

24. The ld. CIT (A) confirmed the addition of 50% on account of reimbursement of medical expenses. AO declining the contentions raised by the assessee that its case does not attract the provisions contained u/s 271(1)(d) of the Act proceeded to hold that since the assessee has failed to prove that the said amount is given for treatment in approved hospitals and as such has been taxed in the hands of the employees, it amounts to furnishing of inaccurate particulars of income to that extent and thereby imposed the penalty of Rs.69,92,000/- and Rs.2,02,97,000/- for AYs 2006-07 & 2007-08 respectively u/s 271(1)(d) of the Act.

25. Assessees carried the matter by way of appeals before the ld. CIT (A) who has deleted the penalty by allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

26. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

27. Undisputedly, assessee, a public sector undertaking, has been providing medical reimbursement expenses to its employees; medical expenses for treatment in approved hospitals to its employees; and incurring township maintenance expenses for the towns created for the benefits of its employees. It is also not in dispute that the addition/disallowance has been made by the AO and confirmed by the ld. CIT (A) on estimate basis on the ground that the assessee has failed to bring on record the evidence that all the reimbursement in each case was above Rs.15,000/-, the limit laid down under the Act and that the benefit of entire maintenance expenses of township roads, gardens etc. by the assessee are for the ultimate benefit and welfare of its employees which are not taxed as prerequisites in the hands of employees and as such are deemed FBT u/s 115WE(3)(E) of the Act.

28. In the backdrop of the aforesaid facts and circumstances of the case, grounds raised by the Revenue and the arguments

addressed by the authorized representatives of the parties, the sole question arises for determination in this case is :-

> ***"as to whether the assessee has concealed the particulars of fringe benefit or furnished inaccurate particulars of such fringe benefits during the assessment proceedings?***

29. Undisputedly, prerequisites drawn by an employee is part of the salaried income. When undisputedly the ld. CIT (A) has deleted the addition on account of medical reimbursement and payment of approved hospital expenses u/s 115WE(2)(a) that too on the ground that no detail or evidence has been brought on record by the assessee to prove that in each case, reimbursement was above Rs.15 000/- to its employees and similarly in case of payment to the approved hospitals, no details have been supplied that the payment was below Rs.15,000/- nor detail of hospital has been brought on record, the assessee was having reasons to claim the deductions. Moreover, in ***Vijaya Bank*** (supra) case, identical issue has been decided in favour of the assessee by deleting the addition made by the AO and confirmed by the CIT (A) to the value of FBT on account of medical reimbursement expenses and on account of medical expenses sought treatment form the approval hospitals.

30. So far as question of addition on account of maintenance expenses of townships of the assessee are concerned, this addition has been held to be not sustainable as per our findings in the preceding paras no.14, 15, 16 & 17. So, when main addition is not sustainable, penalty is also not sustainable.

31. Moreover, in AY 2006-07, ld. CIT (A) has herself deleted the township expenses being not employee welfare expenses and the said order has been confirmed by the Tribunal as discussed in the preceding paras.

32. Furthermore, when the assessee company has specifically excluded certain expenses not to be treated to FBT and placed on record the detail and Revenue has not denied the incurrence of expenses but made addition to the extent of 50% in case of medical reimbursement expenses and medical expenses for treatment in approved hospitals, it was for the Revenue authorities to examine and decide the facts on the basis of material placed before it and it does not amount to concealment of particulars of FBT. Because for the assessee same expenses are prerequisites of the employees and for Revenue the same are FBT. Where the information furnished by the assessee is found to be incorrect or inaccurate, the penalty proceedings are not attracted.

33. Hon'ble Supreme Court in case of ***CIT Vs Reliance Petro products Pvt. Ltd. 322 ITR 158 (S.C.)*** while interpreting the penalty provisions held as under :-

> ***"A glance at the provisions of section 271(1)(c) of the I.T. Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the detail of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is trictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.***
>
> ***Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."***

34. So, in view of what has been discussed above, we are of the considered view that firstly, the Revenue has failed to make out the case of concealment of particulars of fringe benefits or furnishing of inaccurate particulars of such fringe benefits and secondly, addition made by the AO and confirmed by the ld. CIT (A) has

been deleted by the Tribunal, provisions contained u/s 271(1)(d) of the Act are not attracted, hence penalty levied by the AO is not sustainable and the ld. CIT (A) has rightly deleted the same. Both the appeals filed by the Revenue being ITA No.4928/Del./2012 (AY: 2006-07) & ITA No.4929/Del./2012 (AY: 2007-08) are dismissed.

35. Resultantly, the appeals filed by the Revenue in ITA No.3793/Del./2010 (AY: 2006-07), ITA No 4851/Del./2010 (AY: 2007-08) ITA No.3261/Del./2011 (AY : 2008-09) are dismissed; appeals filed by the assessee in ITA No.3285/Del./2010 (AY: 2006-07), ITA No.4689/Del./2010 (AY : 2007-08) & ITA No.2699/Del./2011 (AY : 2008-09) are partly allowed; and appeals filed by the Revenue u/s 271(1)(d) of the Act in ITA No.4928/Del./2012 (AY: 2006-07) & ITA No.4929/Del./2012 (AY: 2007-08) are also dismissed.

Order pronounced in open court on this 2nd day of November, 2018.

Sd/-	**sd/-**
(PRASHANT MAHARISHI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 2nd day of November, 2018
TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-III, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.