Exp. incurred by employer on pick and drop facility of guest wasn't covered under the ambit of FBT

Summary – The Kolkata ITAT in a recent case of Peerless Hotels Ltd., (the Assessee) held that where airline crew members for whom airport pick-up and drop has been incurred were not employees of assessee, expenditure incurred for same could not be treated as liable for fringe benefit tax under section 115WB(2)(D).

The assessee has raised the following grounds :

"1. Whether, on the facts and in the circumstances of the case was it appropriate for the Commissioner of Income-tax (Appeals) to hold that expenditure incurred of Rs. 12,03,658 for provision of free transport towards airport pickup and drop for airline crew members in consideration of regular flow of business attracts fringe benefit under section 115WB(2)(D) of the Act.

2. Whether, on the facts and in the circumstances of the case was it appropriate for the Commissioner of Income-tax (Appeals) to confirm that cost of transport charges for visiting guests of Rs. 14,77,001 which was corresponded by recoveries of Rs. 15,28,783 attracts fringe benefit under section 115WB(2)(B) of the Act.

3. Whether, on the facts and in the circumstances of the case was it appropriate to consider expenditure incurred of Rs. 4,35,813 towards night dropping of employees as attracting fringe benefit tax which ground raised as additional ground was not considered by the Commissioner of Income-tax (Appeals).

4. For that the appellant craves leave to add, alter and or prefer additional ground and to submit relevant papers at the time of hearing of appeal."

In regard to grounds Nos. 1 and 2, it was submitted by the learned authorised representative that the expenditure incurred on account of free transport towards pick-up and drop to the airport of the airline crew members was not liable for fringe benefit tax as the airline crew were not employees of the assessee. It was also submitted that the transport charges on account of visiting guests also was not liable to fringe benefit tax as the guests are not employees of the assessee. It was the submission that fringe benefit tax was liable when there is relationship between the assessee and the person for whom the expenditure was incurred and the relationship was one of the employer and employee. He placed

reliance on the Central Board of Direct Taxes Circular No. 8 of 2005, dated August 29, 2005 more specifically in respect of question No. 7 therein reported in [2005] 277 ITR (St.) 20. It was the submission that as there was no employer and employee relationship in respect of airline crew and the guests, liability of fringe benefit tax was not applicable. In regard to ground No. 3, it was submitted that the employees shift ends at 1.30 am and the expenditure incurred towards the night dropping of the employees was not liable for fringe benefit tax, in so far as it was incurred on account of transportation of the employees to the place of work from the residence and from the place of work to their residence was not treated as fringe benefit as per the circular issued by the Central Board of Direct Taxes.

In reply the learned Departmental representative vehemently supported the orders of the learned Commissioner of Income-tax (Appeals) and the Assessing Officer.

After having considered the rival submissions the ITAT held that at the outset on a perusal of the Circular issued by the Central Board of Direct Taxes in Circular No. 8 of 2005, dated August 29, 2005 clearly specifies that there must be an employer-employees relationship for the purpose of treating the expenses as fringe benefit. In the case of the assessee in respect of grounds Nos. 1 and 2 it is noticed that the airline crew members for whom the airport pick-up and drop has been incurred are not employees of the assessee, consequently the said expenditure cannot be treated as liable for fringe benefit tax under section 115WB(2)(D) of the Act. Similarly the visiting guests cannot be treated as employees of the assessee and the complimentary pick-up and dropping charges incurred on account of visiting guests also do not fall under the purview of the fringe benefit tax under section 115WB(2)(B) of the Act. In respect of the night dropping of the employees the shift ends in the early morning at 1.30 am, the same being on account of pick-up and drop of the employees from their residence to the place of work and returning them to their residence is not liable to be treated as fringe benefit also in view of the Circular issued by the Central Board of Direct Taxes in **Circular No.8 of 2005 dated August 29, 2005** referred to supra. In the circumstances as the issues of this appeal are squarely covered by the Circular of the Central Board of Direct Taxes in **Circular No. 8 of 2005, dated August 29, 2005** referred to supra. The additions as confirmed by the learned Commissioner of Income-tax (Appeals) stand deleted.

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