IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 983/Bang/2010
Assessment year : 2007-08

Karntaka Power Transmission Corporation Ltd., 7th Floor, Cauvery Bhavan, K.G. Road, Bangalore – 560 009.	:	APPELLANT
Vs.		
The Deputy Commissioner of Income Tax, LTU, Bangalore.	:	RESPONDENT

Appellant by : Shri A.C. Raju, F.C.A.
Respondent by : Shri Harsha Prakash, CIT-II(DR)

O R D E R

Per A. Mohan Alankamony, Accountant Member

This appeal instituted by the assessee Company – KPTCL - is directed against the order of the Ld. CIT (A)-LTU, Bangalore in ITA NO: 43/CIT(A)-LTU/09-10 dated: 18.5.2010 for the assessment year **2007-08.**

2. The assessee company has raised **five grounds** in its grounds of appeal, out of which **ground Nos. 1 & 5** do not survive for adjudication as they are general in nature and no specific issues involved. In the

remaining grounds, the substance of the issue is confined to a lone ground that –

> ***"the Ld. CIT (A)-LTU was not justified in holding that the expenditure of Rs.2.76 crores on repairs and maintenance of residential quarters owned by the appellant was liable for Fringe Benefit Tax (FBT)."***

3. Briefly stated, the assessee company [henceforth 'the assessee'] – State Government under-taking – engaged in the business of transmission of electric energy, furnished its return of Fringe Benefits for the assessment year under dispute, admitting a total value of fringe benefit of Rs.3.93 Crores. During the course of assessment proceedings, the AO had noticed, among others, that the assessee had claimed an expenditure of Rs.2.76 crores being repairs and maintenance of residential quarters. After examining the assessee's contentions, the AO was of the view that –

> ***S.115WB (1)(a) says that 'fringe benefits', means***
> ***'any privilege, service, facility or amenity directly or indirectly provided by an employer, whether by way of reimbursement or otherwise, to this employees (including former employee or employees)'***

The above definition of 'fringe benefits' is fairly wide. It includes **all types** of facility or amenity provided to the employees. Obviously, providing of residential quarters to employees is a facility or amenity provided to the employees. This expenditure does not fall within the exclusion provided in the Explanation referred to above. Considering these facts, the assessee's plea to exclude the expenditure on repairs and

maintenance of residential quarters, from the taxable fringe benefits cannot be accepted.

4. Aggrieved, the assessee carried the issue to the Ld. CIT (A) for succor.

4.1. After due consideration of the assessee's contentions as well as critically analyzing the provisions of s.115WB(1) of the Act and also the Board's Circular No.8 of 2005 dt.29.8.2005, the Ld. CIT (A)-LTU had observed thus –

> ***"3.1.(vi) Incidentally, the Board has further clarified vide answers to questions 75 & 77 that even reimbursement of expenditure on books and periodicals to employees was in the nature of expenditure for the purposes of employee welfare while expenditure incurred for the purpose of providing transport facility to employees' children was also in the nature of expenditure on employees welfare falling within the meaning of clause (E) of sub-section (2) of sec.115WB. Considering that even expenses that indirectly benefit employees' welfare is liable to FBT, it follows as a natural corollary that expenditure incurred directly for their welfare such as repairs & maintenance of their residential quarters would definitely be liable to FBT. It is also of relevance to note that it is a settled law that unless a circular is withdrawn or is held to be ultra vires by Courts, they are valid and have to be followed;.***
>
> ***In view of the foregoing analysis and taking into consideration the clarification provided in the Board's Circular No.8 of 2005 dt. 29.8.2005, it is crystal clear that the expenditure of Rs.2,76,54,629/- incurred on repairs & maintenance of employees' quarters falls within the scope of clause (E) of sub-section (2) of sec.115WB relating to employees' welfare and is accordingly liable to FBT."***

5. Not satisfied with the findings of the CIT(A), the assessee has come up with the present appeal. During the course of hearing, Shri A.C. Raju, the Ld. A R came up with a spirited and long drawn-out submission, the gist of which is summarized as under:

Illustrating, especially the provisions of s. 115 WB (3), the Ld. A. R had emphasized that –

- for the purpose of sub-section (1), the privilege, facility or amenity does not include perquisites in respect of which tax was paid or payable by the employee or any benefit or amenity in the nature of free or subsidized transport or any such allowance provided by the employer to his employees for journey by the employees from their residence to the place of work or such place of work to the place of residence;

- none of the above expenditure enumerated in s.115 WB (2) include repairs and maintenance of residential quarters; that the employees were bearing the rental expenses for the residential quarters they occupy which were recovered from their salaries, that as per s.115 WB (3) these type of expenditure where the employee was made liable to pay tax/where the cost of service was recovered from the employee will not be classifiable as fringe benefits (FB);

- that the FB are leviable on the benefits directly or indirectly provided to the employees. The benefits could be in the nature of use of company cars, medical reimbursement, health insurance, entertainment etc., use of hotel boarding and lodging expenses, telephone expenses, guest house expenses. These were the expenditure classifiable as FB to employees. The expenditure towards repairs and maintenance of residential quarters were in no way connected to benefits of employees. These types of expenses were not included in any of the taxable FB enumerated in the sections;

In respect of CIT(A)'s reference to s.115WB (2) in her impugned order at page 4, it was countered that -

- those expenses were not within the ambit of FB. Those expenses were not the benefits passed on directly or indirectly to the employees. Those expenses were incurred for safe-guarding the assets of the assessee. Repairs and maintenance of residential quarters were owned by the assessee and were incurred for safeguarding the assets;

- that if the expense in question does not fall in any of the above categories, then the common parlance test will have to be applied, i.e., the word 'employees welfare', the expenses in question must have some nexus with employees. If the purpose for incurring the

expense is to protect the assessee's legitimate business rather than welfare of/benefit to the employees, the expense would not be 'employee welfare' in the ordinary, natural and popular sense of the term.

- relies on in the case of CIT v. Lala Shridhar (1972) 84 ITR 192 (Del)

- with regard to the reference to Circular No.8 of 2005 by the CIT (A), the contention of the assessee was that all the expenses stated in Qns.73, 75 and 77 (in Circular No.8) were facilities provided to an employee. In the instant case there were no facilities provided. The expenditure incurred includes painting, minor maintenance work, repairs such as electricity etc., which was in the nature of safeguarding the assets and to upkeep the property of the assessee. The expenditure was in no way connected to staff welfare.

- in contrast with the ruling of the jurisdictional Hon'ble Court in the case of CIT v. Mysore Cements Ltd. (1990) 51 Taxmann 219 (Kar) wherein it was held that the expenditure on construction of works' quarters where ownership of the quarters does not vest with the assessee amounts to be expenses in the nature of the employees Welfare, however, in the present case, it was argued, the residential quarters were owned and maintained by the assessee and that the expenses incurred were purely in the nature of safe-guarding and up-keeping of its assets and not providing facilities to the employees;

- yet another case was before the Hon'ble Madras High Court [CIT v. Madras Cements Ltd. (2002) 254 ITR 423 (Mad)] wherein it was ruled by the Hon'ble Court that the money given to employees to enable them to form roads, erect street light-posts in a housing colony formed by them was money spent on the welfare of employees. The land was not owned by the company and, thus, it was argued by the assessee that the money given to the employees was a deductible revenue expenditure and was in the nature of employee welfare expenses and liable to FBT u/s 115WB (2) (E). However, in the present, it was portrayed that the tenements were owned by the assessee and the employees have no concern or any right over the property and, thus, they were not directly or indirectly benefited by the expenditure incurred for upkeep of the property owned by the assessee.

In conclusion, the Ld. A R was very vehement in his urge that the provisions of s.115WB (2)(E) have no application to the facts of the

issue on hand and, thus, the assessee's case doesn't fall within the ambit of s.115WB for FBT.

5.1. On his part, Shri Harsha Prakash, the Ld. DR was very specific in his urge that the definition of 'fringe benefits' in s.115WB (1)(a) of the Act, as rightly pointed out by the AO, is fairly wide which includes all types of facilities or amenities provided to the employees. It was, therefore, pleaded that since the stand of the AO has been vindicated in sustaining the disallowance by the Ld. CIT (A) in her impugned order under challenge, no intervention by this Bench is called for at this stage.

6. We have decisively examined the rival submissions and also attentively perused the relevant records including that of the impugned order of the Ld. CIT (A)-LTU which is under challenge.

6.1. It is an undisputed fact that the assessee has been maintaining residential quarters at various towns and cities of Karnataka for which it had claimed an expenditure of Rs.2.76 crores towards repairs and maintenance. However, the Ld. AO took a stand that as per s.115WB(1)(a) of the Act, the definition of 'fringe benefits' includes all types of facility or amenity provided to the employees and, thus, the assessee's plea to exclude the expenditure on repairs and maintenance of residential quarters from the taxable fringe benefits cannot be acceded to.

6.2. The Ld. CIT (A) also took a similar view by seeking refuge in Board's Circular No.8 of 2005 dt.8.2005 to justify her stand.

6.3. However, the Ld. A R took a stand that none of the expenditure enumerated in s.115WB (2) include repairs and maintenance of residential quarters. There is considerable force in the argument of the Ld. A R that the expenses incurred for repairs and maintenance of residential quarters were not the benefits passed on to the employees either directly or indirectly. The residential quarters were owned by the assessee and to safeguard its assets, the assessee had to incur expenditure by effecting necessary repairs and also the buildings were braced up with white washing and paints for their longevity which cannot be categorized that the expenses in the nature of employees' welfare. It is noteworthy to bring on record that the assessee had not let its residential quarters to employees as 'free accommodation' whereas each employee was required to pay '**rent'** for the quarter occupied by him/her depending upon the type of quarter(s) allotted. Of course, the house rent for the occupation of such quarter has been recovered from the employee's salary every month [source: P 6 of PB AR]. As discussed above, the assessee had incurred expenditure to upkeep the residential quarters for human habitation. This cannot, at any stretch of imagination, be termed that the assessee had provided facility or amenity to its employees whereby the provisions of s. 115WB(2) of the Act have a role to play.

6.4. We shall have a glimpse of the judicial view on this point.

(i) In the case of CIT v. Motor Industries Co. Ltd. (1988) 173 ITR 374 (Kar), the Hon'ble jurisdictional High court in its wisdom had ruled that -

> ***8. ……An expenditure or allowance referred to in this sub-clause should be such, which while it may refer to an asset of the assessee used by the employee, it should all the same constitute an***

amenity or benefit to the employee. Where the expenditure does not add to the benefit or amenity, available to the employee even if the employer incurs the expenditure, whatever be the reason there-for, it cannot be added as a perquisite to the employee or disallowed in the employer's assessment for a similar reason. The building in the present case belongs to the assessee. The repairs to the building helps to retain the building as a good asset with which the assessee as an employer is concerned and protect it from deterioration or destruction. Depreciation allowance claimed enables the assessee either to set aside the amount to replace the building or to compensate him for the wear and tear of the building. Neither of these items renders any service to the employee, who, for the temporary period of his employment, resides in the building. Even if not doing the repairs would result in an accident or danger to the employee resident therein, it will be preposterous to hold that doing repairs is a positive service to the employee. The more correct thing would be to say that asking an employee to stay in a building in a state of repair would be a disservice to him and danger to him. There is no provision in the Income-tax Act which stipulates that avoiding a disservice to an employee or not subjecting him to a danger or disaster would amount to a perquisite to an employee. The repairs done to the building or the depreciation claimed in respect of the building are expenses directly related to the assessee as an owner of the property …….”

(ii) The Hon’ble Madras High court in the case of CIT v. Madras Cements reported in (2002) 254 ITR 423 (Mad) had ruled that –

“The monies given by the assessee to the employees to enable them to form roads and erect streetlights, etc., in a housing colony formed by them were money spent on the welfare of the employees. The land was not owned by the company. The amount given/spent was a subsidy or a benefit given to the employees which was used for the purposes of erecting streetlights, forming roads, etc. The expenditure so far as the company was concerned was clearly in the nature of revenue expenditure.”

With due respects, we would like to point out that the Hon’ble Court took a view that the monies given by the assessee to its employees to form roads etc., in a housing colony formed by its employees and the land in question was not owned by the assessee **whereas** in the present

case, the assessee – KPTCL – was the owner of the residential quarters and to upkeep its assets it had incurred expenditure towards 'repairs & maintenance' which purely in the nature of safeguarding its assets and NOT facilities provided to its employees as portrayed by the Revenue.

6.5. Taking into account the facts and circumstances of the issue as deliberated upon in the foregoing paragraphs and also in conformity with the judicial view on the issue, we are of the considered view that the authorities below were not justified in terming the expenditure incurred by the assessee towards the repairs and maintenance of its assets falls within the ambit of s.115WB of the Act. It is ordered accordingly.

6.6. Before parting with the issue, we would like to emphasis that the Board's Circular No.8 of 2005 in which the Ld. CIT (A) had placed strong reliance to drive home her point. She sought the Board's clarification to strengthen her stand that '*even reimbursement of expenditure on books and periodicals to employees was in the nature of expenditure for the purposes of employees welfare while expenditure incurred for the purpose of providing transport facility to employees' children was also in the nature of expenditure on employees welfare falling within the meaning of clause (E) of sub-section (2) of s.115WB.'* However, we would like to emphasize that in the instant case, the assessee had incurred expenditure to upkeep its assets which doesn't mean to infer even remotely that the benefits and amenities provided to its employees either directly or indirectly and, thus, the Board's Circular referred supra cannot come to Revenue's rescue in any way.

7. **In the result**, the assessee's appeal is **allowed**.

Pronounced in the open court on this 31st day of May, 2011.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(A. MOHAN ALANKAMONY)
Judicial Member	Accountant Member

Bangalore,
Dated, the 31st May, 2011.

Ds/-

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file (1+1)

By order

Assistant Registrar
ITAT, Bangalore.