IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 21124 of 2005
With
SPECIAL CIVIL APPLICATION NO. 21125 of 2005
With
SPECIAL CIVIL APPLICATION NO. 21768 of 2005
With
SPECIAL CIVIL APPLICATION NO. 21770 of 2005
With
TAX APPEAL NO. 474 of 2014
With
TAX APPEAL NO. 1155 of 2014
TO
TAX APPEAL NO. 1157 of 2014
With
TAX APPEAL NO. 888 of 2015

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH **Sd/-**
and
HONOURABLE MR.JUSTICE B.N. KARIA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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GUJARAT CHAMBER OF COMMERCE & INDUSTRY & 1....Petitioner(s)
Versus
UNION OF INDIA THRO' SECRETARY & 2....Respondent(s)

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Appearance:
SCA No.21124/2005

MR KH KAJI & MR MUKESH M PATEL, ADVOCATES for the Petitioners
MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1 - 2
MR PY DIVYESHVAR, ADVOCATE for the Respondent(s) No. 1 - 2
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 3

SCA No.21125/2005

MR KH KAJI & MR MUKESH M PATEL, ADVOCATES for the Petitioners
MR DEVANG VYAS, ADVOCATE for the Respondent(s) No. 1 - 2
MR SHAQEEL A QURESHI, ADVOCATE for the Respondent(s) No. 1
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 3

SCA No.21768/2005

MR MUKESH M PATEL, ADVOCATE for the Petitioner
MR DEVANG VYAS & MR SHAQEEL A QURESHI, ADVOCATES for the Respondent(s) No.1
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 3

SCA No.21770/2005

MR MUKESH M PATEL, ADVOCATE for the Petitioner
MR DEVANG VYAS & MR SHAQEEL A QURESHI, ADVOCATES for the Respondent(s) No.1
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 3

TAXAP No.474/2014
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Appellant
MR SN SOPARKAR, SR. ADVOCATE with MR BS SOPARKAR, ADVOCATE for the Respondent.

TAXAP Nos.1155/2014 to 1157/2014
MR MANISH BHATT. SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Appellant
MR SN SOPARKAR, SR. ADVOCATE with MR VIJAY S. RANJAN, ADVOCATE for the Respondent.

TAXAP No.888/2015
MR MANISH BHATT, SR. ADVOCATE with MRS MAUNA BHATT, ADVOCATE for the Appellant.
MR RK PATEL, ADVOCATE for the Respondent

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 17/03/2017

COMMON CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] As common question of law and facts arise in this group of Special Civil Applications as well as Tax Appeals, all these Special Civil Applications and Tax Appeals are decided and disposed of together by this common judgment and order.

[2.0] Special Civil Application Nos.21124/2005, 21125/2005, 21768/2005 and 21770/2005 have been preferred by the Gujarat Chamber of Commerce and Industries and others for an appropriate writ, direction and order to quash and set aside the Circular No.8/2005 dated 29.08.2005 (hereinafter referred to as "impugned circular") issued by the Central Board of Direct Taxes (hereinafter referred to as "CBDT") and restrain the respondents from enforcing the impugned circular or applying the impugned circular to the employers who are made liable for FBT (hereinafter referred to as "FBT") under the provisions of Chapter XII-H of the Income Tax Act, 1961 (hereinafter referred to as "Act").

[2.1] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 25.10.2013 passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as "Tribunal") in ITA No.3269/Ahd/10 for AY 2006-07 by which the learned Tribunal has allowed the said appeal preferred by the respondent assessee and has deleted the levy of FBT on Rs.1,11,61,364/-, which was levied by the Assessing Officer and confirmed by the learned CIT(A) in respect of sales promotion expenditure, conveyance, tour and travel expenditure, miscellaneous repairs and maintenance, other allowances, telephone expenses, the Revenue has preferred the present Tax Appeal No.474/2014 with the following substantial questions of law.

> *"A. Whether the Appellate Tribunal has substantially erred in deleting the addition of Rs.1.11 crores to the value of Fringe Benefit despite the fact that these expenses were deemed Fringe Benefits provides to employees as per the provisions of Section 115WB(2) Clause A to Q of the I.T. Act, 1961?*
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> *B. Whether the Appellate Tribunal has not appreciated the fact that there was no question of estimation by the Assessing Officer since 20% of such expenses are to be treated as Fringe Benefits as per Section 115 WC(1) of the Act?*

[2.2] Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 03.03.2014 passed by the learned Tribunal in ITA Nos.3086 to 3088/Ahd/10 for AY 2006-07, AY 2007-08 and 2008-09, by which the learned Tribunal has allowed the said appeals preferred by the respondent assessee – Intas Pharmaceuticals Limited and has deleted the levy of the FBT levied by the AO confirmed by the learned CIT(A) on expenditure towards conference, sales promotion, conveyance, hotel boarding and lodging, repairs and maintenance of motor car and maintenance of guest house, the Revenue has preferred the present Tax Appeal No.1155/2014 to 1157/2014 to consider the following substantial question of law.

> *"Whether the Appellate Tribunal has substantially erred in deleting the addition of respective amounts to the value of Fringe Benefit despite the fact that these expenses were deemed Fringe Benefit provided to employees as per provision of Section 115WB(2) clause A to Q of the Income Tax Act, 1961?"*

[2.3] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal in ITA No.179/Ahd/2011 for AY 2006-07 by which the learned Tribunal has allowed the said appeal preferred by the respondent assessee – Cadila Healthcare Limited and has partly allowed the said appeal by deleting the levy of FBT on the expenses incurred by the assessee on seminar and conference expenses, sales promotion, cost of free samples given to Doctors, gift to business associates, medical expenses and club membership fees, the Revenue has preferred the present Tax Appeal No.888/2015 to consider the following substantial question of law.

> *"A. Whether the Appellate Tribunal has substantially erred in law in its interpretation that for applicability of provisions of section 115WB(2), the expenses necessarily are required to be incurred directly for the benefit of the employees?*
>
> *B. Whether the Appellate Tribunal on the above basis is right in deleting the additions towards seminar and conference expenses*

aggregating to Rs.10,89,19,812, Sales promotion expenses aggregating to Rs.20,34,43,795 and cost of free samples aggregating to Rs.7,24,41,000?

C. Whether the Appellate Tribunal is justified in law in deleting the addition to the extent of 50% in respect of expenditure on gifts to business associates aggregating to Rs.17,33,767 and club membership fees aggregating to Rs.72,450 without any justifiable basis?

D. Whether the Appellate Tribunal is justified in law in deleting the addition in respect of reimbursement of medical expenses aggregating to Rs.3,36,74,477 and whether the Tribunal's interpretation of section 115WB(3) r.w. proviso (v) to Section 17(2) is correct in law?"

[3.0] For the sake of convenience, Special Civil Application No.21124/2005 which has been preferred by the Gujarat Chamber of Commerce and Industries and another is treated as a lead matter.

[4.0] The Finance Act, 2005 introduced a new levy, namely, FBT on the valuation of certain fringe benefits. The provisions relating to levy of this tax are contained in Chapter XII-H (Sections 115W to 115WL) of the Act. Sections 115W to 115WL of the Act are reproduced hereinafter.

[4.1] The statement and objects to levy the FBT so stated at the time of introduction of new levy by Finance Act, 2005 are as under:

"2.1 The taxation of perquisites or fringe benefits is justified both on grounds of equity and economic efficiency. When fringe benefits are under-taxed, it violates both horizontal and vertical equity. A taxpayer receiving his entire income in cash bears a higher tax burden in comparison to another taxpayer who receives his income partly in cash and partly in kind, thereby violating horizontal equity. Further, fringe benefits are generally provided to senior executives in the organization. Therefore, under-taxation of fringe benefits also violates vertical equity. It also discriminates between companies which can provide fringe benefits and those which cannot thereby adversely affecting market structure. However, the taxation of fringe benefits raises some problems primarily because -

(a) all benefits cannot be individually attributed to employees, particularly in cases where the benefit is collectively enjoyed:

(b) of the present widespread practice of providing perquisites, wherein many perquisites are disguised as reimbursements or other miscellaneous expenses so as to enable

the employees to escape / reduce their tax liability; and
(c) of the difficulty in the valuation of the benefits.

2.2 In India, prior to assessment year 1998-99, some perquisites/fringe benefits were included in salary in terms of section 17 and accordingly taxed under section 15 of the Income-tax Act in the hands of the employee and a large number of fringe benefits were taxed by the employer-based disallowance method where the quantum of the disallowance was estimated on a presumptive basis.

In practice, taxation of fringe benefits by the employer-based disallowance method resulted in large-scale litigation on account of ambiguity in defining the tax base. Therefore, the taxation of fringe benefits by the employer-based disallowance method was withdrawn by the Finance Act, 1997.

However, the withdrawal of the provisions relating to taxation of fringe benefits by the employer-based disallowance method resulted in significant erosion of the tax base. The Finance Act, 2005 has introduced a new levy, namely, the FBT as a surrogate tax on employer, with the objective of resolving the problems enumerated in para 2.1 above, expanding the tax base and maintaining equity between employers."

[4.2] The tax base for the purposes of FBT is the value of fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year. The determination of the tax base comprises of three elements viz. (a) the scope of the term 'fringe benefits provided'; (b) the scope of the term 'fringe benefits deemed to have been provided'; and (c) the basis of valuation of (a) and (b). It is based on a presumptive method applied to certain heads of expenditure as a measure / indicator of fringe benefits.

After the introduction of new Chapter XII-H of the Act and sections 115W to 115WL of the Act brought on the statute under which the FBT was levied, number of issues / questions arose. Therefore, the CBDT ultimately came out with the impugned circular in the form of question – answers. By the impugned circular the CBDT has clarified that the FBT is leviable on the expenses incurred by the employer in respect

of entertainment; provision of hospitality; conference excluding the fee from participation by the employees in any conference; sales promotion including publicity but excluding specified expenditure on advertisement; conveyance, tour and travel (including foreign travel); use of hotel, boarding and lodging facilities; repair, running (including fuel) and maintenance of motor cars and the amount of depreciation thereon; maintenance of any accommodation in the nature of guest house other than accommodation used for trading purposes; festival celebrations; use of any other club facilities, gifts and scholarships etc. and consequently the FBT is being levied on the expenses incurred by the employer on the aforesaid. Hence, the petitioner – Chamber of Commerce and others have preferred the present Special Civil Applications challenging the impugned circular issued by the CBDT and consequently to restrain the respondents from enforcing the impugned circular or applying the impugned circular to the employer who are made liable for FBT under the provisions of Chapter XII-H of the Act.

[5.0] Shri Mukesh Patel, learned Advocate and Shri S.N. Soparkar, learned Senior Advocate have appeared on behalf of the respective petitioners and respective assessees and Shri M.R. Bhatt, learned Senior Advocate has appeared on behalf of the Revenue.

[6.0] Shri Mukesh Patel, learned Advocate appearing on behalf of the respective petitioners has vehemently submitted that the levy of FBT on the expenses incurred by the concerned employer but not relatable to the employees, as sought to be levied and clarified by the CBDT in the impugned circular is absolutely illegal and contrary to the object and purpose to levy the FBT. It is vehemently submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that as such there is no justification to levy the FBT on the expenses incurred

by the concerned employer with respect to the services not relatable to its employees.

[6.1] It is vehemently submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that as such there is no nexus to levy the FBT on the expenses incurred by the concerned employer with respect to sales promotion expenditure; conveyance; tour and travel expenditure; miscellaneous repairs and maintenance; other allowances; telephone expenses etc. and more particularly as clarified by the CBDT in the impugned circular with any of the services provided to its employees.

[6.2] It is submitted that as per the reasons as elaborated by the Finance Minister while introducing the FBT, while presenting the Union Budget, it was stated 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. It is submitted that it was also stated that the transport services for workers and staff and canteen services in their office and factory will be outside the tax net. It is submitted that it was also stated that the tax is not a new tax.

[6.3] It is further submitted that even in the Memorandum to the Finance Act, 2005 and in the explanatory note in relation to FBT it was stated that the taxation of perquisites provided by an employer to its employees, in addition to the cash salary or wages paid, is subject to varying treatment in different countries. It is further stated that the said benefits are either taxed in the hands of the employees themselves or the value of such benefit is subject to a “FBT” in the hands of the employer. It is submitted that it was stated that the rationale for levying FBT on the employer lies in the inherent difficulty of isolating the “personal element” where there is a collective enjoyment of such benefits and

attributing the same directly to the employee. It is submitted that it was further stated that where the employer directly reimburses the employees for expenses incurred, it becomes difficult to collectively capture the true extent of the perquisite because of the problem of cash flow in the hands of the employer.

[6.4] It is further submitted that even in the interview to the Economic Times on 02.03.2005, the Finance Minister assured that perquisites which are disguised as Fringe Benefits only will be taxed and no legitimate business expenditure will be taxed. It is submitted that a similar statement was made by Hon'ble The Finance Minister while addressing Rajya Sabha on 05.05.2005 and it was made clear that only those expenditures which are otherwise really a perquisite or a Fringe Benefit, which has escaped taxation, the FBT shall be levied.

[6.5] It is submitted that therefore right from very beginning the object and purpose to levy the FBT was in respect of the expenditure incurred by the concerned employer relatable to its employees, which may be termed as perquisites. It is submitted that on no other expenditure which had no direct relation and/or connection with the employer – employee, the FBT is leviable. It is submitted that the ostensible and overt object of FBT as declared in the statement and object of introducing Chapter XII-H by Finance Act, 2005 and as declared by Hon'ble Finance Minister in his speeches as well as statement made by him on the floor of Rajya Sabha, was to tax such Fringe Benefits received by the employees in the hands of employer, where for practical reasons they cannot be individually attributed or where they pose difficulty in valuation.

[6.6] It is submitted that the impugned circular issued by the CBDT runs counter not only to the basic concepts for levy of income tax, but also to the fundamental purpose and objective for levy of FBT which was to levy

FBT on the employer to tax such Fringe Benefits received by the employees, where for practical reasons they cannot be individually attributed or where they pose difficulty in valuation.

[6.7] It is submitted that by and in the impugned circular issued by the CBDT, the CBDT has clarified that the FBT shall be levied on expenditure which is totally connected with the employees, former employees or their families.

[6.8] It is submitted that by the impugned circular it is clarified by the CBDT that the expenditure made by the employer on traveling, hotel etc. the expenditure incurred by the employer for any of the purposes enumerated in clauses (A) to (P) of sub-section (2) of section 115WB, the FBT is leviable, which is absolutely contrary to the object and purpose to levy the FBT, as the expenses incurred by the employer for any one of the purposes enumerated in clauses (A) to (P) of sub-section (2) of section 115WB are not relatable to the employees and therefore, the FBT is not leviable on such expenses.

[6.9] It is submitted that therefore, the impugned circular is substantially running beyond the legislative intent underlying Chapter XII-H. It is submitted that the circular issued by the CBDT, in exercise of powers under Section 119 of the Act are always in the aid of the main section and cannot be contrary to the legislative intent.

[6.10] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that as held by the Hon'ble Supreme Court in the case of **K.P. Varghese vs. Income Tax Officer & Anr.** reported in **(1981) 131 ITR 597 (SC)**, the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the

mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted.

[6.11] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that Section 115WB(2) gives an impression that even if the expenses mentioned in that section have no connection with the employees, Fringe Benefit shall be deemed to have been provided to employees on incurring of such expenses. It is submitted that that is how the CBDT circular interprets section 115WB(2). It is submitted that however, such an interpretation cannot be accepted. It is submitted that the charging Section 115WB(a) creates charge in respect to Fringe Benefit provided or deemed to have been provided by an employer to its employees. It is submitted that section 115W(a) is a charging section and it must be construed strictly.

[6.12] It is submitted that deeming provision under Section 115WB(2) is for deemed Fringe Benefits to employees if there are expenses which have some connection with the employees.

[6.13] It is submitted that section 115WB(1) exhaustively defines the term "Fringe Benefit" and for a benefit to fall within the said charging section, employer – employee nexus is pre-condition because the definition refers to a consideration for employment. It is submitted that CBDT has also accepted in its circular that employer – employee relationship is a pre-requisite for a levy of FBT. However, the expenses to fall within the definition of "Fringe Benefit" given in section 115WB(1) will need to result into benefit to employees.

[6.14] It is submitted that definition of "Fringe Benefit" in section 115WB(1), which requires employer – employee nexus, is for the purpose of the entire Chapter XII-H and therefore, the term "Fringe

Benefit" in section 115WB(2) is also covered by the definition of "Fringe Benefit" under Section 115WB(1).

[6.15] It is submitted that in the case of **CIT vs. Hindustan Petroleum Corporation Limited** reported in **(1991)197 ITR 1**, the Bombay High Court has held that a legal fiction has to be carried to its logical conclusion but only within the parameter of the purpose for which the fiction is created. It is submitted that it is held that as far as possible, the legal fiction should not be given a meaning so as to cause injustice.

[6.16] It is submitted that in the case of **CIT vs. Vadilal Lallubhai** reported in **(1972)86 ITR 2 (SC)**, the Hon'ble Supreme Court has held that the legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond their legitimate field.

[6.17] It is vehemently submitted that in the case of K.P. Varghese (Supra), the Hon'ble Supreme Court has observed and held that the CBDT circulars are aid in construction of statute. The circulars issued by the CBDT are in the nature of *contempovanea expositio* and they furnish legitimate aid in construction of statutory provision. It is submitted that it is further observed by the Hon'ble Supreme Court in the said decision that the task of interpretation of statutory enactment shall not be a mechanical one. It is submitted that it is more than mere reading of mathematical formula. It is submitted that while interpreting any statute an attempt shall be made to discover the legitimate interest from the language used and the interpretation shall not be solely based on purely literal reading. It is submitted that it is further observed and held that plain literal interpretation of statutory provision, if it results in absurd and unreasonable consequence, not in consonance with legislative

intent, it must be avoided. It is submitted that such avoidance is necessary to arrive at the obvious intention of the legislature and to produce rationale construction. It is further submitted that it is further observed and held by the Hon'ble Supreme Court in the said decision that it is a well settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or do some violence to it, so as to achieve the obvious intention of the legislature and produce a rationale construction. It is submitted that it is further observed that the Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.

[6.18] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that as observed by the Hon'ble Supreme Court in the case of **New India Assurance Co. Ltd. vs. Nusli Naveli Wadia** reported in **2007(14) Scale 556**; **Tanna and Modi vs. CIT** reported in **2007(8) Scale 511** and **Udai Singh Dagar and Ors. vs. Union of India** reported in **2007(7) Scale 278** and even as observed by the Hon'ble Supreme Court in the case of **R & B Falcon (A) PTY Ltd. vs. Commissioner of Income Tax** reported in **(2008)301 ITR 309 (SC)**, a statute should ordinarily be given a purposive construction.

[6.19] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that as held by the Hon'ble Supreme Court in the case of **Kerala Financial Corporation vs. CIT** reported in **(1994) 210 ITR 129 (SC)**, when section 119 of the Income Tax Act has empowered the CBDT to issue order, instructions, directions for "proper administration" or for such other purposes

specified in sub-section (2) of section 119 and such an order, instruction or direction cannot overwrite the provisions of the Act; that would be destructive of all the known principles of law, as the same would really amount to giving power to a delegated authority to even amend the provision of law enacted by the Parliament.

[6.20] It is further submitted by Shri Patel, learned Advocate appearing on behalf of the respective petitioners that in the case of **Commissioner of Income-tax (LTU) vs. Tata Consultancy Services Ltd.** reported in **(2015) 60 Taxmann.com 332 (Bombay)**, the Bombay High Court has observed that while levying the FBT the legislature always had in mind a relationship of employer – employee and by virtue of which, these benefits are admissible to the employees. It is submitted that after taking note of the Budget speech of the Minister of Finance while presenting the budget for the year 2005-06, the Explanatory Notes and the circulars, it is observed and held that the basis of tax is the benefits or perquisites which emanate out of an employer-employee relationship. It is held that there is a perquisite for levy of FBT. It is submitted that in the said decision the Bombay High Court confirming the order passed by the learned Tribunal quashed and set aside the levy of FBT on the expenses incurred by the assessee Company towards sales promotion expenses.

[6.21] Shri Patel, learned Advocate appearing on behalf of the respective petitioners has also relied upon some of the decisions of the Tribunals taking the view that for the expenses incurred by the employer not relatable to the employee, the FBT is not leviable.

Making above submissions and relying upon above decisions, it is requested to quash and set aside the impugned circular issued by the CBDT and consequently restrain the Revenue from levying FBT on the

expenses incurred by the employer not relatable to the employees at all more particularly the expenses incurred for the purposes mentioned in clause (A) to (P) of section 115WB(2) of the Act.

[7.0] Shri S.N. Soparkar, learned Senior Advocate appearing on behalf of the respective assessees – employers has, in addition to the above submissions made by Shri Patel, learned Advocate appearing on behalf of the respective petitioners, submitted that as held by the Hon'ble Supreme Court in the case of **Commissioner of Income-tax, Bangalore vs. J.H. Gotla** reported in **156 ITR 323 (SC) (Paras 46 and 47)** and in the case of **C.W.S. (India) Limited vs. Commissioner of Income Tax** reported in **208 ITR 649 (SC) (Para 10)**, when literal interpretation leads to absurd result, the statute must be interpreted in such a manner that absurdity arising by literal interpretation is avoided.

[7.1] Shri Soparkar, learned Senior Advocate appearing on behalf of the respective assessees relying upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Gwalior Rayon Silk Mfg. Co. Ltd.** reported in (1992) 196 ITR 149 (Para 5) and in the case of **Commissioner of Income Tax vs. National Taj Traders** reported in **121 ITR 535 (SC) (Para 10)** has vehemently submitted that as held by the Hon'ble Supreme Court in the aforesaid decisions, the Court should interpret the Statute so as to achieve the object of the statute by reading the statute as a whole.

[7.2] It is further submitted by Shri Soparkar, learned Senior Advocate appearing on behalf of the respective assessees that if two interpretations are possible, one which upholds the validity of the statute must be adopted. It is submitted that this must be so even when the validity of the statute is not in question because interpretation of a statutory provision will not depend upon the nature of legislation before

the Court. In support of his above submissions, Shri Soparkar, learned Senior Advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Assam Company Limited vs. State of Assam** reported in **248 ITR 567 (Para 8)** and the decision of the Hon'ble Supreme Court in the case of K.P. Varghese (Supra) (Paras 5, 6 and 8).

[7.3] It is further submitted by Shri Soparkar, learned Senior Advocate appearing on behalf of the respective assessees that Rule of construction as laid down in Heydon's case may be applicable to the facts and circumstances of the present case.

Heydon's Principle	Facts of the present case
What was the common law before the making of the Act	The employees, and not the employer, have to pay tax on the value of perquisites enjoyed by them.
What was the mischief and defect for which the common law did not provide	Several perquisites which were disguised as Fringe Benefit escaped taxes when they were collectively enjoyed by the employees and where it was difficult to attribute benefit to particular employee.
What remedy the parliament hath resolved and appointed to cure the disease of commonwealth	Fringe Benefit that are collectively enjoyed by the employees and where it is difficult to attribute benefit to particular employee should now be taxed in the hands of the employer.
True reason for remedy	Only expenses attributable to Employees can be taxed and not other business expenses wholly unconnected with the employees.

[7.4] It is further submitted by Shri Soparkar, learned Senior Advocate appearing on behalf of the respective assessees that section 115WC is a

charging section. It is submitted that levy of any tax cannot go beyond the charging section. It is submitted that therefore considering section 115WC of the Act, the expenses which are to be incurred by the employers relatable to the employees only are subjected to the levy of FBT. In support of his above submissions, he has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. Vatika Township (P) Limited** reported in **367 ITR 466 (Para 28)** as well as in the case of **Commissioner of Wealth Tax vs. Ellis Bridge Gymkhana** reported in **229 ITR 1 (Para 5).**

[7.5] It is further submitted by Shri Soparkar, learned Senior Advocate appearing on behalf of the respective assessees that considering the object and purpose to levy the FBT, the FBT is a tax vicariously levied on the employer in lieu of levy on the samples for the benefits enjoyed by them. It is submitted that vicarious liability pre-supposes primary liability. It is submitted that therefore, prior to insertion of Chapter of FBT, the employees were not liable to pay tax on / for the expenses in question, the same cannot be subjected to FBT in the hands of the employer. In support of his above submissions, he has also relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. Eli Lilly & Co. India Pvt. Ltd.** reported in **312 ITR 225 (Para 34).**

Making above submissions and relying upon above decisions, it is requested to quash and set aside the impugned circular and to hold that the employer / assessee is not liable to pay the FBT on the expenses incurred which are not relatable to the employees more particularly in respect of clause (A) to (P) of section 115WB(2) of the Act. The facts in respective Tax Appeals shall be discussed hereinafter.

[8.0] All these petitions are vehemently opposed by Shri M.R. Bhatt,

learned Senior Advocate appearing on behalf of the Revenue. It is vehemently submitted by Shri Bhatt, learned Senior Advocate appearing on behalf of the Revenue that in the present case vires of none of the provisions of Chapter XII-H of the Act are under challenge. It is submitted that therefore one is required to consider the provisions of the statute as they are.

[8.1] It is submitted that section 115WA and 115WB are unambiguous and straight and therefore, there is no place for insertion or subtraction or substitution of any word into it.

It is submitted by Shri Bhatt, learned Senior Advocate appearing on behalf of the Revenue that sub-section (2) of section 115WB is an independent section and is not controlled by sub-section (1) and both sub-sections (1) and (2) operate in different fields.

[8.2] It is submitted that any inference that sub-section (2) is controlled by sub-section (1) and any expenditure which is not a consideration for employment as mentioned under different heads of sub-section (2) cannot be considered as Fringe Benefit, shall make most of the provisions of sub-section (2) as redundant, otiose or meaningless. It is submitted that as per the catena of decisions of the Hon'ble Supreme Court as well as this Court, a Statute should ordinarily be given purposive construction which will not result in an anomaly or absurdity.

[8.3] It is submitted that a simple and plain meaning of sub-section (2) of Section 115WB reveals that if the employer incurs any of the expenditure as mentioned under clauses (A) to (Q), though may or may not have been in consideration of the employment or for providing any benefit or incentive to the employees, but also for benefit to any third person, but in the course of business or profession, is **deemed** to have been provided by the employers to employees. It is submitted that with

the aforesaid, scope has been expanded covering those expenses, which have been mentioned under sub-section (2), even though the employee – employer relationship may or may not be present or even though any benefit is derived or not to the employees.

[8.4] It is further submitted that what is provided under Section 115WB(1) is specifically relatable to the employer – employee relationship. However what is provided under Section 115WB(2), which is an independent provision has nothing to do with the expenditure incurred relatable to the employees. It is submitted that a careful reading of clause (b) as well as clauses (i), (ii), (iv), (v), (vi) and (viii) of section 115WB(2)(D) reveals that the Legislature has excluded from the purview of Fringe Benefit Tax certain specific forms of payments to third parties as detailed therein. It is submitted that the reasonable presumption is that the specific type of expenditure in the form of payment to third persons which have been specifically excluded under the Statute is not liable to FBT, but the remaining as mentioned under different heads of sub-section (2) relating to payment to third parties is subjected to FBT. It is submitted that therefore wherever the expenditure in the form of payment to the employees has to be included, the word "employee" has been specifically used, e.g. clause (E) of section 115WB(2), but not otherwise.

[8.5] It is submitted that a careful reading of section 115WB(1) reveals that the words "any privilege, service, facility or amenity, directly or indirectly", are wide enough to cover the expenditure incurred by the employer for the employees for entertainment, hospitality in any manner whether by way of food or benefits or not in beverages or in any other manner **excluding** food or beverages provided to the employees in the office or factory or non-transferable paid vouchers usable only at eating

joints or outlets; use of hotel, boarding and lodging facilities; repair, running (including fuel) and maintenance of aircrafts; telephone, festival celebrations, use of health club and similar facilities, use of any other club facilities, gifts, scholarships, tour and travel including foreign travel of the employees. It is submitted that therefore as such there was no need for the Parliament to enact and mention the expenses separately under clauses (A) to (Q) of section 115WB(2). It is submitted that therefore the reasonable inference that can be drawn is that the type of expenditure though does not relate to employee – employer relationship, yet is deemed to be incurred by the employer on the employee so as to expand and cover the type of expenditure under the FBT. It is submitted that any other interpretation would make section 115WB(2) nugatory and/or redundant.

[8.6] It is vehemently submitted by Shri Bhatt, learned Senior Advocate appearing on behalf of the Revenue that as language of section 115WB(1) & (2) is very clear and unambiguous, the ordinary and natural meaning is to be given and the statute is to be interpreted literally. It is submitted that as observed by the Hon'ble Supreme Court in catena of decisions it is the duty of the Court not to modify the language of the Act and if such meaning is clear and unambiguous, effect should be given to the provision of the statute whatever may be the consequence. It is submitted that therefore if section 115WB(2) is literally interpreted and it is read as it is, in that case, any expenditure mentioned under clauses (A) to (Q) of section 115WB(2) are treated as deemed Fringe Benefit and therefore, on such expenses the employer / assessee is liable to pay the FBT.

[8.7] Now, so far as the submission made by Shri Soparkar, learned Senior Advocate appearing on behalf of some of the assessees that in

absence of charging section the tax cannot be levied and the submissions that section 115WA can be said to be a charging section and section 115WB cannot be said to be the charging section and it is a definition section, the Fringe Benefit on the expenditure incurred not relatable to the employees and more particularly as mentioned in section 115WB(2) (A) to (P) is not leviable is concerned, Shri Bhatt, learned Senior Advocate appearing on behalf of the Revenue has vehemently submitted that in section 115WA itself it has been specifically stated and mentioned that in addition to the income tax charged under the Act, there shall be charge for every assessment year, additional income tax (as FBT benefit) in respect of the Fringe Benefit provided or deemed to have been provided by an employer to his employees. It is submitted that what is deemed Fringe Benefit is mentioned in section 115WB. It is submitted that therefore the levy of FBT on the expenses incurred by the employer in relation to the clause (A) to (P) of section 115WB(2) cannot be said to be *de hors* the charging section / provision.

Making above submissions it is requested to dismiss the present petitions and allow the Appeals preferred by the Revenue.

[9.0] Heard the learned Counsels appearing for respective parties at length.

At the outset it is required to be noted that in the present group of petitions the respective petitioners have not challenged the *vires* of the section 115WA and/or section 115WB and/or any other provisions of the FBT. As per the settled law, the statute more particularly taxing statute is required to be read as it is. The words cannot be added or substituted in statute to give it a different meaning, when the words or any of the statute is clear and unambiguous. As observed by the Hon'ble Supreme Court in the case of **Calcutta Jute Manufacturing Co. Vs. Commercial Tax Officer** reported in **AIR 1997 2920**, in case of

interpreting a taxing statute, one has to look into what is clearly stated. There is no room for searching the intentions, presumptions or equity. The question of interpretation of statute arises only when there is any doubt, ambiguity, inconsistency, incompleteness or lacuna in language or construction of the statute. While considering a particular provision of statute there shall be a literal interpretation. The question with respect to read into the statutory provision or the purposive interpretation may come when the *vires* of provision is under challenge and/or when the language of the statute is ambiguous and/or when there is any doubt or lacuna or incompleteness in the language or construction of the statute. Otherwise the provision of the statute is required to be read as it is and it must be given a literal interpretation. In a given case where the *vires* of the provision of the statute is under challenge, to uphold the *vires* the Court may have purposive interpretation and/or read into the statutory provision. However, the same is permissible, when the plain, literal interpretation of a statutory provision produces a manifestly absurd and unjust result which can never have been intended by the legislature. In such a situation the Court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rationale construction. The Court may also in such a case read into the statutory provision a condition which, though not expressed is implicit as constituting the basis assumption underlying the statutory provision (K.P. Varghese (Supra)]. In light of the above settled proposition of law and when the *vires* of sections 115WA, 115WB and/or any other provisions of the FBT are not under challenge, the questions raised in the present Special Civil Applications are required to be considered.

[9.1] While considering the submissions made by the learned Counsels appearing for respective parties and while considering the issues /

questions involved in the present petitions, relevant provisions of FBT are required to be referred to and considered, which are as under:

"115W. In this Chapter, unless the context otherwise requires,—

(a) "employer" means,—

(i) a company;

(ii) a firm;

(iii) an association of persons or a body of individuals, whether incorporated or not;

(iv) a local authority; and

(v) every artificial juridical person, not falling within any of the preceding sub-clauses:

Provided that any person eligible for exemption under clause (23C) of section 10 or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951) shall not be deemed to be an employer for the purposes of this Chapter;

(b) "fringe benefit tax" or "tax" means the tax chargeable under section 115WA.

Charge of fringe benefit tax.

Section 115WA. (1) In addition to the Income-tax charged under this Act, there shall be charged for every assessment year commencing on or after the 1St day of April, 2006, additional Income-tax (in this Act referred to as fringe benefit tax) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year at the rate of **thirty per cent.** on the value of such fringe benefits.

(2) Even if no Income-tax is payable by an employer on his total income computed in accordance with the provisions of the Income-tax Act, the tax on fringe benefits shall be payable by such employer.

Fringe Benefits.

Section 115WB. (1) For the purposes of this Chapter, "fringe benefits" means any consideration for employment provided by way of-

(a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);

(b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members;

(c) any contribution by the employer to an approved superannuation fund for employees; and

(d) any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees).

Explanation.-For the purposes of this clause,-

(i) "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;

(ii) "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.

(2) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:-

(A) entertainment;

(B) provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade but does not include-

(i) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;

(ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets;

(iii) any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed;

(C) conference (other than fee for participation by the employees in

any conference).

Explanation.-For the purposes of this clause, any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference;

(D) sales promotion including publicity:

Provided that any expenditure on advertisement,-

(i) being the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system;

(ii) being the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition;

(iii) being the expenditure on sponsorship of any sports event or any other event organised by any Government agency or trade association or body;

(iv) being the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal;

(v) being the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards, display of products or by way of such other medium of advertisement;

(vi) being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above;

(vii) being the expenditure on distribution of samples either free of cost or at concessional rate; and

(viii) being the expenditure by way of payment to any person of repute for promoting the sale of goods or services of the business of the employer, shall not be considered as expenditure on sales promotion including publicity;

(E) employees' welfare.

Explanation.-For the purposes of this clause, any expenditure incurred or payment made to-

(i) fulfil any statutory obligation; or

(ii) mitigate occupational hazards; or

(iii) provide first aid facilities in the hospital or dispensary run by the employer; or

(iv) provide creche facility for the children of the employee; or

(v) sponsor a sportsman, being an employee; or

(vi) organise sports events for employees, shall not be considered as expenditure for employees' welfare;

(F) conveyance;

(G) use of hotel, boarding and lodging facilities;

(H) repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon;

(I) repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon;

(J) use of telephone (including mobile phone) other than expenditure on leased telephone line

Section 115WE (1) Where a return has been made under Section 115WD,- such return shall be processed in the following manner, namely:-

(a) the value of fringe benefits shall be computed after making the following adjustments, namely:-

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the value of fringe benefits computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any advance

tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

[Proviso 2]

(2) Where a return has been furnished under section 115WD, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the value of fringe benefits or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of [six months from the end of the financial year] in which the return is furnished.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence. As the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into accdunt all relevant material, which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the value of the fringe benefits paid or payable by the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

(4) Where a regular assessment under section 115WD(3) is made, -

(a) any tax or interest paid by the assessee under sub-

section (1) shall be deemed to have been paid towards such regular assessment

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly. s;

(K) [***]

(L) festival celebrations;

(M) use of health club and similar facilities;

(N) use of any other club facilities;

(O) gifts; and*

(P) scholarships;

(Q) tour and travel (including foreign travel).

(3) 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 subsidised transport 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.

Value of fringe benefits.

Section 115WC. (1) For the purposes of this Chapter, the value of fringe benefits shall be the aggregate of the following, namely:-

(a) cost at which the benefits referred to in clause (b) of sub-section (1) of section 115WB, is provided by the employer to the general public as reduced by the amount, if any, paid by, or recovered from, his employee or employees:

Provided that in a case where the expenses of the nature referred to in clause (b) of sub-section (1) of section 115WB are included in any other clause of sub-section (2) of the said section, the total expenses included under such other clause

shall be reduced by the amount of expenditure referred to in the said clause (b) for computing the value of fringe benefits;

(b) the amount of contribution, referred to in clause (c) of sub-section (1) of section 115WB, which exceeds one lakh rupees in respect of each employee;

(ba) the fair market value of the specified security or sweat equity shares referred to in clause (d) of sub-section (1) of section 115WB, on the date on which the option vests with the employee as reduced by the amount actually paid by, or recovered from, the employee in respect of such security or shares.

Explanation.-For the purposes of this clause,-

(i) "fair market value" means the value determined in accordance with the method as may be prescribed7 by the Board;

(ii) "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;

(c) twenty per cent of the expenses referred to in clauses (A) to (L) of sub-section (2) of section 115WB;

(d) fifty per cent of the expenses referred to in clauses (M) to (P) of sub-section (2) of section 115WB;

(e) five per cent of the expenses referred to in clause (Q) of sub-section (2) of section 115WB.

(2) Notwithstanding anything contained in sub-section (1),-

(a) in the case of an employer engaged in the business of hotel, the value of fringe benefits for the purposes referred to in clause (B) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(aa) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (B) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(ab) in the case of an employer engaged in the business of

carriage of passengers or goods by ship, the value of fringe benefits for the purposes referred to in clause (B) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(b) in the case of an employer engaged in the business of construction, the value of fringe benefits for the purposes referred to in clause (F) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(c) in the case of an employer engaged in the business of manufacture or production of pharmaceuticals, the value of fringe benefits for the purposes referred to in clauses (F) and (G) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(d) in the case of an employer engaged in the business of manufacture or production of computer software, the value of fringe benefits for the purposes referred to in clauses (F) and (G) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(da) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (G) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(db) in the case of an employer engaged in the business of carriage of passengers or goods by ship, the value of fringe benefits for the purposes referred to in clause (G) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(e) in the case of an employer engaged in the business of carriage of passengers or goods by motor car, the value of fringe benefits for the purposes referred to in clause (H) of sub-section (2) of section 115WB shall be "five per cent" instead of "twenty per cent" referred to in clause (c) of sub-section (1);

(f) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (I) of sub-section (2) of section 115WB shall be taken as Nil.

Return of Fringe Benefits.

Section 115WD (1) Without prejudice to the provisions contained in section 139, every employer who during a previous year has paid or made provision for payment of fringe benefits to his employees, shall, on or before the due date, furnish or cause to be furnished a return of fringe benefits to the Assessing Officer in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, in respect of the previous year.

Explanation.- In this sub-section, "due date" means :

(a) where the employer is

(i) a company *;* or

(ii)a person (other than a company), whose accounts are required to be audited under this Act or under any other law for the time being in force,

the [30th day of September] of the assessment year

(b) in the case of any other employer, the 31st day of July of the assessment year.

(2) In the case of any employer who, in the opinion of the Assessing Officer, is responsible for paying 'fringe benefit tax under this Act and who has not furnished a return under subsection (1), the Assessing Officer may, after the due date, issue a notice to him and serve the same upon him, requiring him to furnish within thirty days from the date of service of the notice, the return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(3) Any employer responsible for paying fringe benefit tax who has not furnished a return within the time allowed under ubsection (1) or within the time allowed under a notice issued under subsection (2), may furnish the return for any previous year, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

(4) If any employer, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the

expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Assessment.

Section 115WE (1) Where a return has been made under Section 115WD,- such return shall be processed in the following manner, namely:-

(a) the value of fringe benefits shall be computed after making the following adjustments, namely:-

(iii) any arithmetical error in the return; or

(iv) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(b) the tax and interest, if any, shall be computed on the basis of the value of fringe benefits computed under clause (a);

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (c); and

(e) the amount of refund due to the assessee in pursuance of the determination under clause (c) shall be granted to the assessee:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

[Proviso 2]

(2) Where a return has been furnished under section 115WD, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the value of fringe benefits or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served

on the assessee after the expiry of [six months from the end of the financial year] in which the return is furnished.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence. As the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into accdunt all relevant material, which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the value of the fringe benefits paid or payable by the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

(4) Where a regular assessment under section 115WD(3) is made, -

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

Best judgment assessed.

Section 115WF. If any person, being an employer-

(a) fails to make the return required under sub-section (1) of section 115WD and has not made a return under sub-section (3) or a revised return under sub-section (4) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (2) of section 115WD or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 115WE, the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the fringe benefits to the best of his

judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice as to why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (2) of section 115WD has been issued prior to the making of an assessment under this section.

Fringe Benefits escaping assessment.

Section 115WG. If the Assessing Officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, he may, subject to the provisions of sections 115WH, 150 and 153, assess or reassess such fringe benefits and also any other fringe benefits chargeable to tax which have escaped assessment and which come to his notice subsequently in the course of the proceedings under this section, for the assessment year concerned (hereafter referred to as the relevant assessment year).

Explanation.-For the purposes of this section, the following shall also be deemed to be cases where fringe benefits chargeable to tax have escaped assessment, namely:-

(a) where no return of fringe benefits has been furnished by the assessee;

(b) where a return of fringe benefits has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the value of fringe benefits in the return;

(c) where an assessment has been made, but the fringe benefits chargeable to tax have been under-assessed.

Section 15WH. Issue of notice where fringe benefits have escaped assessment.- (1) Before making the assessment or reassessment under section 115WG, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of the fringe benefits in respect of which he is assessable under this Chapter during the previous year corresponding to the relevant assessment year, in the prescribed form and

verified in the prescribed manner and setting forth such other particulars as may be prescribed, and the provisions of this Chapter shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 115WD.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

(3) No notice under sub-section (1) shall be issued for the relevant assessment year after the expiry of six years from the end of the relevant assessment year.

Explanation.—In determining fringe benefits chargeable to tax which have escaped assessment for the purposes of this sub-section, the provisions of the Explanation to section 115WG shall apply as they apply for the purposes of that section.

(4) In a case where an assessment under sub-section (3) of section 115WE or section 115WG has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, after the expiry of four years from the end of the relevant assessment year, unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

Section 115WI. Payment of fringe benefit tax.- Notwithstanding that the regular assessment in respect of any fringe benefits is to be made in a later assessment year, the tax on such fringe benefits shall be payable in advance during any financial year, in accordance with the provisions of section 115WJ, in respect of the fringe benefits which would be chargeable to tax for the assessment year immediately following that financial year, such fringe benefits being hereafter in this Chapter referred to as the "current fringe benefits".

Advance tax in respect of fringe benefits.

Section 115WJ (1) Every assessee who is liable to pay advance tax under Section 115W-I, shall on his own accord, pay advance tax on his current fringe benefits calculated in the manner laid down in subsection (2).

2. The amount of advance tax payable by an assessee in the financial year shall be thirty per cent (30%) of the value of the fringe benefits referred to in section 1 15WC, paid or payable in each quarter and shall be payable on or before the 15th day of the month following such quarter.

The advance tax payable for the quarter ending on the 31St day of March of the financial year shall be payable on or before the 15th day of March of the said financial year. [Proviso 1]

3. Where an assessee, has failed to pay the advance tax for any quarter or where the advance tax paid by him is less than thirty per cent. of the value of fringe benefits paid or payable in that quarter, he shall be liable to pay simple interest at the rate of one per cent. on the amount by which the advance tax paid falls short of, thirty per cent. of the value of fringe benefits for any quarter, for every month or part of the month for which the shortfall continues.

Section 115WK. Interest for default in furnishing return of fringe benefits.- (1) Where the return of fringe benefits for any assessment year under sub-section (1) or sub-section (3) of section 115WD or in response to a notice under sub-section (2) of that section, is furnished after the due date, or is not furnished, the employer shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment under section 115WF, on the amount of the tax on the value of fringe benefits as determined under sub-section (1) of section 115WE or regular assessment as reduced by the advance tax paid under section 115WJ.

(2) The provisions contained in sub-sections (2) to (4) of section 234A shall, so far as may be, apply to this section.

Section 115WKA. **Recovery of fringe benefit tax by the employer from the employee**.—Notwithstanding anything contained in any agreement or scheme under which any specified security or sweat equity shares referred to in clause (*d*) of sub-section (1) of section 115WB has been allotted or transferred, directly or indirectly, by the employer on or after the 1st day of April, 2007, it shall be lawful for the employer to vary the agreement or scheme under which such specified security or sweat equity shares has been allotted or transferred so as to recover from the employee the fringe benefit tax to the extent to which such employer is liable to pay the fringe benefit tax in relation to the value of fringe benefits provided to the employee and determined under

clause (*ba*) of sub-section (1) of section 115WC.".

Section 115WKB. ***Deemed payment of tax by employee.—***(1) Where an employer has paid any fringe benefit tax with respect to allotment or transfer of specified security or sweat equity shares, referred to in clause (*d*) of sub-section (1) of section 115WB, and has recovered such tax subsequently from an employee, it shall be deemed that the fringe benefit tax so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him only to the extent to which the amount thereof relates to the value of the fringe benefit provided to such employee, as determined under clause (*ba*) of sub-section (1) of section 115WC.

(2) Notwithstanding anything contained in any other provisions of this Act, where the fringe benefit tax recovered from the employee is deemed to be the tax paid by such employee under sub-section (1), such employee shall, under this Act, not be entitled to claim —

(*i*) any refund out of such payment of tax; or

(*ii*) any credit of such payment of tax against tax liability on other income or against any other tax liability.".

Section 115WL. Application of other provisions of this Act.- Save as otherwise provided in this Chapter, all other provisions of this Act shall, as far as may be, apply in relation to fringe benefits also."

[9.2] By Finance Act, 2005, Chapter XII-H was inserted creating additional tax benefit on the prescribed assessees in the form of FBT, with effect from 01.04.2006. Section 115WA of the Act prescribes that in addition to the income tax chargeable under the Act, there shall be charge for every assessment year commencing on or after 01.04.2006, additional Income Tax (FBT) in respect of Fringe Benefits **provided** or **deemed to have been provided by an employer to his employees** during the relevant previous year. Section 115WB of the Act describes Fringe Benefit which are liable to charge of FBT as prescribed in section 115WA of the Act. Sub-section (1) of section 115WB prescribes that "for the purposes of this Chapter, "fringe benefit" means any consideration

for employment provided by way of .....". The presence of the expression "any consideration for any employment" is significant and section 115WB(1), inasmuch as the benefits by way of clause (a) to (d) listed therein are directed to its employees (including former employee or employees). Section 115WB is an interpretation section. It is in two parts. It provides for a direct meaning under section 115WB(1). It also has an expanded meaning. The expanded meaning of the said provision is contained in sub-section (2). Whereas sub-section (1) takes within its sweep any consideration for employment, *inter alia,* by way of privilege service, facility or amenity directly or indirectly, sub-section (2) thereof expands the said definition stating as to what the Fringe Benefit would be deemed to have been provided. At this stage the observations made by the Hon'ble Supreme Court in the case of R & B Falcon (A) PTY Ltd. (Supra) is required to be considered. The provision of FBTR more particularly section 115WA and 115WB fell for consideration before the Hon'ble Supreme Court in the case of R & B Falcon (A) PTY Ltd. (Supra). While considering the provisions of FBT in Chapter XII-H and the very CBDT Circular which has been challenged in the present petitions, the Hon'ble Supreme Court in paras 12 to 18 has observed and held as under:

> "12. Fringe benefit tax is a new concept. The taxes to be levied on the fringe benefit provided or deemed to have been provided by an employer to employees during the previous year is at the rate of 30 per cent on the value of such fringe benefits. The object for imposition of the said tax, as is evident from the said circular dated 29.8.2005, was to bring about an equity. The intention of the Parliament was to tax the employer who, on the one hand, deducts the expenditure for the benefit of the employees including entertainment, etc. and on the other when the employees getting the perks are to be taxed, those who get direct or indirect benefits from the expenditures incurred by the employer, no tax is leviable. As stated in the objective, it is for bringing about a horizontal equity and not a vertical equity.
>
> 13. Sub-section (1) of Section 115WB contains the interpretation section. It is in two parts. It provides for a direct meaning, as also an expanded meaning. Expanded meaning of the said provision is

contained in sub- section (2). Whereas sub-section (1) takes within its sweep any consideration for employment, inter alia, by way of privilege service, facility or amenity directly or indirectly, sub-section (2) thereof expands the said definition stating as to when the fringe benefit would be deemed to have been provided. The expansive meaning of the said term 'benefits' by reason of a legal fiction created also brings within its purview, benefits which would be deemed to have been provided by the employer to his employees during the previous year. Indisputably, sub-section (3) refers to sub-section (1) only. Ex facie, it does not have any application in regard to the matters which have been brought within the purview of the fringe benefit tax by reason of application of the deeming provision. We are concerned here with a question in regard to grant of exemption in respect of 'conveyance' as provided for in clause (F) of sub-section (2) and 'tour and travel' which is provided for in clause (Q) of sub-section (2) of Section 115WB.

14. CBDT categorically states in answer to question number 7 that sub- section (2) provides for an expansive definition. Does it mean that sub-section (2) is merely an extension of sub- section (1) or it is an independent provision? If sub-section (2) is merely an extension of sub-section (1), Mr. Ganesh may be right but we must notice that Section 115WA provides for imposition of tax on expenditure incurred by the employer or providing its employees certain benefits. Those benefits which are directly provided are contained in sub-section (1). Some other benefits, however, which the employer provides to the employees by incurring any expenditure or making any payment for the purpose enumerated therein in the course of his business or profession, irrespective of the fact as to whether any such activity would be carried on a regular basis or not, e.g., entertainment would, by reason of the legal fiction created, also be deemed to have been provided by the employer for the purpose of sub-section (2). Whereas sub-section (1) envisages any amount paid to the employee by way of consideration for employment, what would be the limits thereof are only enumerated in sub-Section (2). We, therefore, are of the opinion that sub-sections (1) and (2), having regard to the provisions of Section 115WA as also sub-section (3) of Section 115WB, must be held to be operating in different fields.

15. We must test the submissions of Mr. Ganesh from another angle. The learned counsel contended that any benefit or amenity in the nature of free or subsidized transport provided by the employer to his employee for the purposes mentioned in sub-section (3) are to be found only in clauses (F) and (Q) of sub-section (2) and if that be so, the statute must be held to envisage grant of exemption in respect of matters which do not form the subject matter thereof.

We have noticed the factual matrix of the instant case. The employees concerned are experts in their field. They are necessarily residents of other country. They are brought to the Rig by providing air tickets for

their coming from their place of residence to the Rig. The employer incurs the said expenditure as of necessity. It, therefore, clearly falls within the purview of the words ‘consideration for employment'. If fringe benefits are provided for consideration for employment, which is given or provided to the employee by way of an amenity, reimbursement or otherwise; clearly clause (a) of sub-section (1) shall be attracted.

A statute, as is well known, must be read in its entirety. What would be the subject matter of tax is contained in sub-sections (1) and (2). Sub- section (3), therefore, provides for an exemption. There cannot be any doubt or dispute that the latter part of the contents of sub-section (3) must be given its logical meaning. What is sought to be excluded must be held to be included first. If the submission of learned Solicitor General is accepted, there would not be any provision for exclusion from payment of tax any amenity in the nature of free or subsidized transport.

16. Thus, when the expenditure incurred by the employer so as to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount of journey or free tickets therefor are provided by him, the same, in our opinion, would come within the purview of the term ‘by way of reimbursement or otherwise'. The Advanced Law Lexicon defines “otherwise" as:

> “By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity.”

“Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, ‘in a different manner; in other respects’.

As a general rule, 'otherwise' when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton, 46 LJMC 167, The words ‘or otherwise’, in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as a are kindred to the classes before mentioned, (Cent. Dict.).

17. It is now a well settled principle of law that a statute should ordinarily be given a purposive construction – New India Assurance Company Ltd. vs. Nusli Neville Wadia and Anr. 2007 (14) SCALE 556; Tanna and Modi vs. CIT, Mumbai XXV and Ors. 2007 (8) SCALE 511 and Udai Singh Dagar and Ors. vs. Union of India (UOI) 2007 (7) SCALE 278.

18. The Parliament, in introducing the concept of fringe benefits, was clear in its mind in so for as on the one hand it avoided

> imposition of double taxation, i.e., tax both on the hands of the employees and employers; on the other, it intended to bring succour to the employers offering some privilege, service, facility or amenity which was otherwise thought to be necessary or expedient. If any other construction is put to sub-sections (1) and (3), the purpose of grant of exemption shall be defeated. If the latter part of sub- section (3) cannot be given any meaning, it will result in an anomaly or absurdity. It is also now a well settled principle of law that the court shall avoid such constructions which would render a part of the statutory provision otiose or meaningless – Visitor v. K.S. Misra (2007) 8 SCC 593; Commissioner of Sales Tax, Delhi and Ors. v. Shri Krishna Engg. Company and Ors. (2005) 2 SCC 692."

[9.3] In the aforesaid decision the Hon'ble Supreme Court has also further observed that CBDT has the requisite jurisdiction to interpret the provisions of the Act. It is further observed that interpretation of CBDT being in the realm of executive construction, should ordinarily held to be binding, save and except when it violates any provision of the law and is contrary to any judgment rendered by the Courts. As observed hereinabove section 115WB is in two parts. Sub-section (1) of section 115WB is directly relatable to the employer – employee i.e. the benefits directly provided by the employer to his employees and/or family of the employees and/or past employees. However, sub-section (2) of section 115WB is with respect to the Fringe Benefit deemed to have been provided. Sub-section (2) of section 115WB of the Act elucidates the Fringe Benefit which shall be **deemed** to have been provided by the employer to his employees. It provides that if an employer in the course of his business or profession incurs any expenditure for the purposes set out therein, it shall be **deemed** that "fringe benefit" has been provided by the "employer to the employees". Section 115WB(2) is a deeming provision. As observed hereinabove section 115WB(1) is directly relatable to the benefits given by the employer to his employees, family of the employees or past employees. If the submission on behalf of the petitioners / assessees that Fringe Benefit is leviable only on the benefit

provided by the employer to the employees and/or on the expenses incurred by the employer with respect to the benefits relatable to the employees only, in that case sub-section (2) of section 115WB would become redundant. If the intention of the legislature was such, in that case the legislature would not have provided sub-section (2) of section 115WB and would not have provided the word "**deemed**". As observed by the Hon'ble Supreme Court in the case of R & B Falcon (A) PTY Ltd. (Supra), sub-section (2) of section 115WB is independent and sub-sections (1) and (2) of section 115WB operate in different fields. As observed by the Hon'ble Supreme Court in the said decision, by reason of legal fiction created the services provided mentioned in sub-section (a) to (p) in sub-section (2) of section 115WB, the said benefits are deemed to have been provided by the employer to the employees.

At this stage it is required to be noted that under Section 115WB(1) the expenses incurred by the employer, in consideration for employment, for the benefits, services etc. as mentioned under Clause (a) to (d) of his employees are liable to be subjected to the FBT. The words "consideration for employment", "employer", "employee", "employees" have been repeatedly mentioned not only in the main section (Section 115WA) but also in every clause of section 115WB(1). On perusal of entire section 115WB(2) it reveals that wherever the Parliament has intention to include the expenditure from which any benefit is derived out to the employees, the word "employees" has been specifically used. Whereas, the expenditure as mentioned under other heads i.e. mentioned in clauses (A) to (D) of sub-section (2) of Section 115WB, the word "employee" has been intentionally omitted. Rather the word "any person" has been used. Even certain expenses which are generally incurred by the employer in the ordinary course of business and cannot be in any manner said to be incurred by the employer for the welfare of benefit of the employee, in the nature of those expenses being

such, even without any benefit to the employees have been subjected to FBT through expressed provision of statutes and by legal fiction during the same as deemed fringe benefit.

[9.4] On perusal of the entire section 115WB read with Section 115WA, the language of the aforesaid provisions/sections is clear, unambiguous. There is no place for an insertion or subtraction or substitution of any word into it. As observed hereinabove and even as observed by the Hon'ble Supreme Court in the case of R & B Falcon (A) PTY Ltd. (Supra), sub-section (2) is an independent section. It is not controlled by sub-section (1). Both sub-sections (1) and (2) of section 115WB operate in different fields. If the contention / submission on behalf of the assessees that the expenditure incurred by the employer towards benefit given to the employees, family of the employees or the past employees only are subjected to the FBT is accepted, in that case most of the provisions of sub-section (2) would become redundant, otiose or meaningless.

[10.0] As observed hereinabove the language of Sections 115W, 115WA, 115WB(1) and 115WB(2) is very clear and unambiguous. As observed hereinabove, section 115WA is a charging section and sections 115W and 115WB can be said to be explanatory sections. "FBT" or "tax" under Chapter XII-H is defined under section 115WB. As per section 115WB, "FBT" or "Tax" means the tax chargeable under Section 115WA. As per section 115WA, which can be said to be a charging section, in addition to the income tax charged under the Act, there shall be charge for every assessment year commencing on or after the 1st of April 2006, additional income tax (FBT) in respect of the Fringe Benefit provided or **deemed to have been provided** by an employer to his employees during the previous year. It also further provides that the tax on Fringe

Benefit shall be payable by such employer notwithstanding that no income tax is payable by such an employer on his total income computed in accordance with the provisions of the Act. Thus, as per section 115WA, FBT is liable to be paid in respect of the Fringe Benefit provided or deemed to have been provided by an employer to his employees. What can be said to be the "fringe benefits" is defined and/or explained under sub-section (1) of section 115WB. Section 115WB, as observed hereinabove, is in two parts. Sub-section (1) of section 115WB can be said to be with respect to the direct fringe benefits provided by the employer to his employees. Sub-section (2) of section 115WB can be said to be with respect to fringe benefits deemed to have been provided by an employer. On fair reading of sub-section (2) of section 115WB if the employer has incurred any expense on, or made any payment for the purposes mentioned in section 115WB(2)(A) to 115WB(2)(P), the same can be said to be fringe benefits deemed to have been provided by the employer to the employees. Under the circumstances with respect to any expenses incurred by the employer on, or by the payment made by the employer for the purposes mentioned in any of the provisions of Section 115WB(2)(A) to 115WB(2)(P), irrespective of the fact whether such services are relatable to the employees or not, the employer is liable to pay the FBT, as the aforesaid benefits are treated as Fringe Benefits deemed to have been provided by the employer to his employees. Any other interpretation and/or reading of sections 115W and 115WB shall be contrary to the provisions of the Statute and/or any other interpretation and/or reading, more particularly as sought to be canvassed on behalf of the respective assessees / employers would make sections 115WA and 115WB nugatory and/or otiose. At the cost of repetition it is observed that none of the employers / petitioners have challenged the vires of section 115WB of the Act. Therefore, sections 115WA and 115WB are required to be read as it is.

[11.0] In view of the aforesaid facts and circumstances and the observations made hereinabove, more particularly when it is found that the language of sections 115W, 115WA, 115WB(1) and 115WB(2) is very clear and unambiguous and none of the provisions of any Statute are under challenge (constitutional validity), the submissions made on behalf of the respective petitioners that while considering the provisions of any Statute, there shall be a plain and literal interpretation of statutory provisions and/or the legislative intent are not required to be considered in detail. For the same reasons the decisions relied upon by the learned Counsel appearing on behalf of the petitioner / Assessees, referred to hereinabove, also are not required to be considered in detail.

[12.0] Apart from the above, FBT is a tax and therefore, hardship is not relevant in interpreting fiscal statutes are well known principles. In Bengal Immunity Co. Ltd. vs. State of Bihar and Others, a seven-Judge Bench speaking through majority in paragraph 43 (at pg. 685) of the Judgment while dealing with hardship in the statutes stated as follows :

> "…….If there is any real hardship of the kind referred to, there is Parliament which is expressly invested with the power of lifting the ban under cl. (2) either wholly or to the extent it thinks fit to do. Why should the Court be called upon to discard the cardinal rule of interpretation for mitigating a hardship, which after all may be entirely fanciful, when the Constitution itself has expressly provided for another authority more competent to evaluate the correct position to do the needful?"

[12.1] In Commissioner of Income Tax, Madras v. R.SV. Sr. Arunachalam Chettiar, a three-Judge Bench of the Hon'ble Supreme Court, inter alia, observed inparagraph 13 (at pgs. 1220-21) of the Judgment, "equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not." In the Income Tax Officer, Tuticorin v. T.S. Devinatha Nadar etc., this Court in paragraph 30 (at pg. 635) of the Judgment it is observed as follows :

> "30. From the foregoing decisions it is clear that the consideration whether a levy is just or unjust, whether it is equitable or not, a consideration which appears to have greatly weighed with the majority, is wholly irrelevant in considering the validity of a levy. The courts have repeatedly observed that there is no equity in a tax. The observations of Lord Hatherley, L.C. in (1869) 4 Ch. A 735. "In fact we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the legislature contemplated," were made while construing, a non-taxing statute. The said rule has only a limited application in the interpretation of a taxing statute. Further, as observed by that learned Judge in that very case the question in each case is "whether the legislature had sufficiently expressed its intention" on the point in issue."

The Court highlighted that the Court is not concerned itself with the intention of the Legislature when the language expressing such intention was plain and unambiguous.

[12.2] Under the circumstances, when the language of Section 115WA and 115WB is clear and unambiguous and even the intention of the legislature while enacting sections 115WA and 115WB(2) is very clear i.e. with respect to the "deemed fringe benefits", neither there is any scope for either literal and/or purposive interpretation nor there is any occasion to consider the intention and for that purpose the speech of Hon'ble Prime Minister in the Parliament. At the cost of repetition it is observed that in absence of challenge to the constitutional validity of either sections 115WA or 115WB, both the aforesaid provisions are required to be read as they are. As per the cardinal principle of law, the provisions are required to be read, more particularly taxing provisions are required to be read not only as they are but even while reading such provisions one has to see that the provisions do not become nugatory and/or otiose.

[12.3] Now so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of K. P. Varghese (Supra) is

concerned, at the outset it is required to be noted that the said decision shall not be applicable to the facts of the case on hand more particularly when the *vires* of sections 115WA and/or 115WB are not under challenge and as observed hereinabove, the aforesaid statutory provisions are required to be read as they are.

[13.0] In view of the above and for the reasons stated above and considering the provisions of Sections 115W, 115WA, 115WB(1) and 115WB(2) as they are, the CBDT has rightly clarified that with respect to the expenses incurred by the assessee / employer for the services / activities referred to in clause (A) to (P) of sub-section (2) of Section 115WB, there shall be FBT, is absolutely just and proper and in consonance with the provisions of the Statute more particularly sections 115WA, 115WB and 115WC. The clarifications made by the CBDT in the impugned circular cannot be said to be contrary to the provisions of the Statute more particularly Sections 115W, 115WA, 115WB(1) and 115WB(2). Under the circumstances, the challenge to the impugned circular fails and it is held that the FBT is leviable on the expenses referred to in clauses (A) to (P) of sub-section (2) of Section 115WB as they are deemed to be the fringe benefits deemed to have been provided by the employer to his employees. Under the circumstances, the petitions deserve to be dismissed and are, accordingly, dismissed.

[14.0] Now, we shall deal with respective Tax Appeals preferred by the Revenue.

Tax Appeal No.474/2014

[14.1] That by the impugned judgment and order the learned Tribunal has deleted the addition of Rs.1.11 Crores to the value of fringe benefit. On considering the impugned judgment and order passed by the learned Tribunal it appears that the nature of the benefit provided by the

employer were as under:

1. Sales Promotion
2. Conveyance, Tour and Travels
3. Misc. Repairs and Maintenance
4. Other allowances
5. Telephone Expenses

[14.2] In view of our above decision and as it is held that on the expenses, referred to in clauses (A) to (P) of sub-section (2) of Section 115WB, incurred by the employer, the employer is liable to pay the FBT subject to section 115WC of the Act, present Tax Appeal No.474/2014 deserves to be allowed. The learned Tribunal has substantially and materially erred in deleting the addition of Rs.1.11 Crores to the value of the fringe benefit. Under the circumstances, question No.(A) in Tax Appeal No.474/2014 is held in favour of the Revenue and against the assessee.

[14.3] Now, so far as question No.(B) is concerned, it is required to be noted that the Fringe Benefit is required to be valued as per section 115WC(1) of the Act more particularly 20% of such expenses are to be treated as fringe benefits as per section 115WC(1) of the Act. Under the circumstances, learned Tribunal has materially erred in valuing the Fringe Benefit on the basis of the estimation. Under the circumstances, question No.(B) is also held in favour of the Revenue and against the assessee.

Tax Appeal Nos.1155/2014 to 1157/2014

[15.0] Now, so far as Tax Appeal Nos.1155/2014 to 1157/2014 are concerned, they are with respect to the expenses incurred by the assessee on (1) Conference, (2) Sales Promotion, (3) Conveyance, (4)

Hotel, Boarding and Lodging, (5) Repairs and Maintenance of Motor Car and (6) Maintenance of Guest House.

In view of the reasons stated hereinabove in aforesaid Special Civil Applications and as we have held that on the expenses referred to in clause (A) to (P) of sub-section (2) of section 115WB of the Act, the FBT is liable to be paid, the impugned judgment and order passed by the learned Tribunal deserves to be quashed and set aside and is accordingly quashed and set aside. The substantial question of law is, therefore, answered in favour of the Revenue and against the assessee.

Tax Appeal No.888/2015

[16.0] Now, so far as the Tax Appeal No.888/2015 is concerned, they are with respect to the expenses incurred by the assessee on the following.

1. Seminar & Conference Expenses
2. Sales Promotion
3. Cost of free Samples given to Doctor
4. Gift to Business Associates
5. Medical Expense
6. Club Membership Fees

In view of the reasons stated hereinabove in aforesaid Special Civil Applications and as we have held that on the expenses referred to in clause (A) to (P) of sub-section (2) of section 115WB of the Act, the FBT is liable to be paid, the impugned judgment and order passed by the learned Tribunal deserves to be quashed and set aside and is accordingly quashed and set aside. The substantial question of law is, therefore, answered in favour of the Revenue and against the assessee.

[17.0] In view of the above and for the reasons stated above,

respective Special Civil Application Nos.21124/2005, 21125/2005, 21768/2005 and 21770/2005 fail and are, accordingly, dismissed. Rule is discharged in each of the petitions.

In view of the above and for the reasons stated above, respective Tax Appeal Nos.474/2014, 1155/2014 to 1157/2014 and 888/2015 deserve to be allowed and are, accordingly, allowed. Respective questions of law in respective Tax Appeals are held in favour of the Revenue and against the respective assessee. Respective Tax Appeals are allowed to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

Ajay