IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai

Before Shri D. Manmohan, Vice President
and Shri D. Karunakara Rao, Accountant Member

ITA No. 8404/Mum/2011
(Assessment Year: 2008-09)

A C I T - 2 (3) Room No. 556, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Tata Chemicals Ltd. Bombay House 24 Homi Mody Street Mumbai 400001 PAN - AAACT 4059 M
Appellant		**Respondent**

ITA No. 1819 & 1730/Mum/2011
(Assessment Years: 2007-08 & 2006-07)

D C I T - 2 (3) Room No. 555, 5th Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Tata Chemicals Ltd. Bombay House 24 Homi Mody Street Mumbai 400001 PAN - AAACT 4059 M
Appellant		**Respondent**

Appellant by: Ms. Girija Dayal
Respondent by: Shri Dinesh Vyas

Date of Hearing: 29.11.2012
Date of Pronouncement: 29.11.2012

<u>O R D E R</u>

Per D. Manmohan, V.P.

These three appeals, filed at the instance of the Revenue, involve identical issue and therefore we proceed to dispose of the same by a combined order for the sake of convenience.

2. At the outset it may be noticed that the appeal pertaining to A.Y. 2008-09 was listed for hearing on 26.11.2012 wherein the following ground was urged before us:

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that sales promotion expense of Rs.2.27 cr. cannot be charged under FBT without appreciating

that sales promotion expenses is to be included in the value of taxable fringe benefits as provided u/s. 115WB(2) of the I.T. Act.”

3. The impugned order of the CIT(A) reads as under: -

“1. The appeal pertains to addition of ₹2,27,06,318/- of fringe benefit with respect to sales of promotion expenses paid to Tata Sons Ltd. This issue is covered in favour of the appellant by the orders of my Ld. Predecessor for A.Ys. 2006-07 & 2007-08 dated 29.12.2010, as per Para 4 to 4.9 and Para 5 to 5.2, Pages 1 to 11 of the order of A.Y. 2007-08 and identical order passed for A.Y. 2006-07. ***Following the same, the appeal is allowed****.”*

4. Having regard to the fact that no details were found in the impugned order the Bench was of the opinion that this requires be clubbed alongwith the appeals pertaining to A.Y. 2006-07 and A.Y. 2007-08, for which the learned D.R. as well as the learned counsel for the assessee agreed and accordingly the appeals pertaining to the earlier assessment years were called for. Registry accordingly placed the two appeal sets, which are numbered as ITA 1730/Mum/2011 (2006-07) and ITA No. 1819/Mum/2011 (2007-08). Here also the ground urged before the Tribunal was verbatim the same except for the fact that there is variation in the amounts disallowed.

5. We have heard the learned counsel for the assessee as well as the CIT-DR.

6. The case of the assessee is that identical issue was decided in favour of the assessee by the ITAT Mumbai Benches in the following two cases: -

1. ACIT vs. H V Transmission Ltd. ITA No. 7927/Mum/2010 dated 09.11.2012
2. DCIT vs. Tata Asset Management Ltd. ITA No. 2735 & 2736/Mum/2011 dated 25.04.2012.

7. The case of the AO was that the assessee paid to Tata Sons Ltd. towards subscription for the use of TATA name, marks and marketing indica in respect of the company’s products and services, which was treated by the assessee as sales promotion expenditure but it was not considered for calculating deemed fringe benefit. He therefore took the amount paid by the assessee company for the purpose of computing deemed fringe benefit under

section 115WB of the Act. The first appellate authority observed that section 115WA which deals with "charge of fringe benefits tax" speaks of levying tax in respect of fringe benefits provided or deemed to have been provided by an employer to his employees………………… In other words the scheme of fringe benefits tax focuses on payments resulting in some benefits to the employees of the assessee whereas in the present case the agreement is with Tata Sons Ltd., who is not an employee of the assessee company. Looking at the intention of the Legislature, the learned CIT(A) observed that FBT should not be levied in the instant case since it is restricted to payments which benefit an employee directly or indirectly. In the present case the impugned payment did not result in any such benefit and hence the same cannot be held exigible to FBT. Further aggrieved Revenue is in appeal before us.

8. Both the parties agreed that the facts and circumstances are identical in all the three years and the fact remains that the assessee made payments to Tata Sons Ltd., which is the proprietor of the brand name and logo of TATA. Therefore, the payment cannot be stated to have been made to any employee of the assessee company. Under identical circumstances the ITAT Mumbai Benches in the aforementioned cases held that fringe benefits tax is not leviable under such circumstances. By respectfully following the aforementioned decisions and considering the facts of the case, we are of the view that the order passed by the learned CIT(A) do not call for any interference. Therefore we uphold the order passed by the learned CIT(A) and dismiss the appeals filed by the Revenue.

9. In the result, appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 29th November, 2012.

Sd/-	Sd/-
(D. Karunakara Rao)	**(D. Manmohan)**
Accountant Member	**Vice President**

Mumbai, Dated: 29th November, 2012

<u>*Copy to:*</u>

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 6, Mumbai*
4. *The CIT– 2, Mumbai City*
5. *The DR, "E" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.