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Evolution of Fringe Benefit Tax

Section 17(2)(vi) included within the meaning of salary, the value of any other fringe benefit or amenity as may be prescribed. The provision has to be understood as empowering the Board to notify any item of fringe benefit or amenity, which has not been named in the elaborate definition of perquisite, which would include any benefit or amenity granted or provided free of cost or at a concessional rate under section 17(2)(iii). It is also conceivable that what is not charged under the Act, because of the absence of a rule of valuation, was left to be charged by subordinate legislation by prescribing a rule. But it is only method of valuation, that is left to be prescribed for any fringe benefits or amenity.

The court also indicated that it was disinclined to debilitate a popular democratic Government experimenting with social and economic issues by a trial and error method. It is true that in Salgaocar's case, the issue related to the consideration, whether such interest-free or concessional loan could be treated as a perquisite for purposes of the ceiling under section 40A(5) for deduction in the employer's hands. But the Supreme Court had therein specifically approved the decisions in CIT v. P. R. S. Oberoi [1990] 183 ITR 103 (Cal), P. Krishna Murthy v. CIT [1997] 224 ITR 183 (Karn) and CIT v. M. K. Vaidya [1997] 224 ITR 186 (Karn). All these cases relate to direct assessment on employees. While the power to prescribe the method of valuation is patent under the new provision in section 17(2)(vi), what could not be understood as perquisite in law in the light of the fact, that there is no compulsion for any one to charge interest on any loan or to charge any particular amount as interest, cannot possibly be treated as perquisite by the Central Board of Direct Taxes under the powers available to it by way of subordinate legislation. (Kalpesh Classes an exclusive place for CA coaching. Tel. 23820676)

But where it treats what is not a perquisite as a perquisite, it appears that it can be challenged and that in view of the Supreme Court endorsing the view that there is no perquisite in concessional or interest-free loans given by an employer or for that matter by any one to any one else, it does appear to be not only hard on the salaried taxpayer, but also beyond the powers expected under a delegated legislation.

Introduction of Fringe Benefit tax

The taxation of perquisites or fringe benefits provided by an employer to his employees, in addition to the cash salary or wages paid, is subject to varying treatment in different countries. These benefits are either taxed in the hands of the employees themselves or the value of such benefits is subject to a 'fringe benefit tax' in the hands of the employer. The

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rationale for levying a fringe benefit tax on the employer lies in the inherent difficulty in isolating the 'personal element' where there is collective enjoyment of such benefits and attributing the same directly to the employee. This is so especially where the expenditure incurred by the employer is ostensibly for purposes of the business but includes, in partial measure, a benefit of a personal nature. Moreover, in cases where the employer directly reimburses the employee for expenses incurred, it becomes difficult to effectively capture the true extent of the perquisite provided because of the problem of cash flow in the hands of the employer.

Therefore, it is proposed to adopt a two pronged approach for the taxation of fringe benefits under the Income-tax Act. Perquisites which can be directly attributed to the employees will continue to be taxed in their hands in accordance with the existing provisions of section 17(2) of the Income-tax Act and subject to the method of valuation outlined in rule 3 of the Income-tax Rules. In cases, where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, it is proposed to levy a separate tax known as the fringe benefit tax on the employer on the value of such benefits provided or deemed to have been provided to the employees. (Kalpesh Classes an exclusive place for CA coaching. Tel. 23820676)

Introduction of Chapter XII-H

For this purpose, a new Chapter XII-H is proposed to be inserted in the Income-tax Act containing sections 115W to 115WL, which provides for the levy of additional income-tax on fringe benefits. The Chapter is divided into three parts. Part A contains the meaning of certain expressions used, part B enumerates the basis of charge and part C delineates the procedures for filing of return in respect of fringe benefits, assessment and the payment of tax thereon.

The tax is payable in respect of the value of fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year. The value of fringe benefits so calculated, is subject to additional income-tax in respect of fringe benefits at the rate of thirty per cent. as provided in section 115WA. The fringe benefit tax is payable by the employer even where he is not liable to pay income-tax on his total income computed in accordance with the other provisions of this Act.

What is a Fringe Benefit

Fringe benefits as outlined in section 115WB, mean any privilege, service, facility or amenity directly or indirectly provided by an employer to his employees (including former employees) by reason of their employment. They also include reimbursements, made by the employer either directly or indirectly to the employees for any purpose,

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contributions by the employer to an approved superannuation fund as well as any free or concessional tickets provided by the employer for private journeys undertaken by the employees or their family members.

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 items mentioned in table presented below in form of annexure A.

The privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee.

Computation of Fringe Benefit

The method of computation of the value of fringe benefits for purposes of levy of the fringe benefit tax is provided in section 115WC as the aggregate of, (Kalpesh Classes an exclusive place for CA coaching. Tel. 23820676)

- (a) Cost of free or concessional tickets for private journeys of the employees or their family members as provided by the employer to the general public as reduced by any amount paid or recovered from the employee
- (b) The actual amount of contribution made by the employer to the approved superannuation fund
- (c) A specified percentage of each of the expenses enumerated in the table below in form of annexure A.
- (d) In case of specified industry specific % is prescribed (see the table below in form of annexure A).

Procedure of the Fringe Benefit

An employer liable to pay fringe benefit tax is required to furnish a return of fringe benefits before the due date as given in section 115WD. Section 115WE outlines the procedure for the assessment of the return of fringe benefits filed by the employer and the determination of tax or interest payable or refund due and in either case the issue of intimation to that effect. Section 115WF provides for a best judgement assessment where the employer fails to furnish the return under section 115WD or fails to comply with a notice issued under section 115WE. Where the Assessing Officer has reason to believe

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that any fringe benefits chargeable to tax have escaped assessment for any assessment year, section 115WG provides for the reassessment of such fringe benefits which have escaped assessment and section 115WH provides for issue of notice for assessment or reassessment under section 115WG.

The provisions of section 115WI and section 115WJ provide for the payment of advance tax in respect of fringe benefits and the interest payable by the employer in case of delay in making such payment. Section 115WK provides for the charging of interest for default in furnishing return of income and section 115WL provides for the application of all other provisions of the Income-tax Act in relation to fringe benefits as well, save as otherwise provided. (Down Load from www.kalpeshclasses.com)

Section 271FB is proposed to be inserted to provide for the levy of penalty for the failure to furnish a return of fringe benefits.

Consequential amendments have also been proposed in section 2, section 17, section 40, section 119, section 124, section 139A, section 140, section 140A, section 142, section 153, section 238, section 239, section 244A, section 246A, section 271, , section 273B, section 276CC and section 278 to include a reference to the provisions of this Chapter. For the detailed discussion see the class room discussion of Prof. KALPESH SANGHAVI.

CBDT Clarification on Fringe Benefit Tax

CBDT has issued detailed circular 08 of 2005, clarifying various issues of FBT including FBT for international transaction. This circular of the board raises more question then it solves rather it adds fuel to the fire. Students are strongly told to go through around 100 clarification of the board and particularly the controversial ones. This circular insults the intelligence of the country men. In a nut shell CBDT has interpreted this tax as expenditure tax rather than fringe benefit tax. For the detailed study refer to class room discussion.

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**ITEMS OF FRINGE BENEFIT AND ITS RATE FOR VALUE
DETERMINATION**

ANNEXURE A

SECTION 115	ITEM OF FRINGE BENEFIT (FB)	VALUE OF FB	SPECIFIED INDUSTRY.
	FRINGE BENEFIT 115WB(1)		
WB(1)(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) ;	Actual Cost of employer	
WB(1)(b)	Any free or concessional ticket provided by the employer for private journeys of his employees or their family members ; and		
WB(1)(c)	Any contribution by the employer to an approved superannuation fund for employees. (Kalpesh Classes an exclusive place for CA coaching. Tel. 23820676)		
	DEEMED FRINGE BENEFIT		
WB(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 :—		
WB(2)(A)	entertainment ;	20 %	

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SECTION 115	ITEM OF FRINGE BENEFIT (FB)	VALUE OF FB	SPECIFIED INDUSTRY.
WB(2)(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 ;	20 %	(5 % for hotels)
WB(2)(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 ;	20 %	
WB(2)(D)	sales promotion including publicity : Provided that any expenditure on advertisement,—	20 %	

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SECTION 115	ITEM OF FRINGE BENEFIT (FB)	VALUE OF FB	SPECIFIED INDUSTRY.
	(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 spectacles, kiosks, hoardings, bill boards or by way of such other medium of advertisement ; and (vi) being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above, shall not be considered as expenditure on sales promotion including publicity ;		

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SECTION 115	ITEM OF FRINGE BENEFIT (FB)	VALUE OF FB	SPECIFIED INDUSTRY.
WB(2)E	employees' welfare ; Explanation.—For the purposes of this clause, any expenditure incurred or payment made to fulfil any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees' welfare ;	20 %	
WB(2)F	conveyance, tour and travel (including foreign travel) ;	20 %	(5 % for construction business / pharmaceuticals / software manufactures)
WB(2)G	use of hotel, boarding and lodging facilities ;	20 %	(5 % for pharmaceuticals / software manufactures)
WB(2)H	repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon ;	20 %	(5 % for business of carriage of goods or passengers by motor car)
WB(2)I	repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon :	20 %	(Nil for business of carriage of goods or passenger by air craft)

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SECTION 115	ITEM OF FRINGE BENEFIT (FB)	VALUE OF FB	SPECIFIED INDUSTRY.
WB(2)J	use of telephone (including mobile phone) other than expenditure on leased telephone lines ;	20 %	
WB(2)K	maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes ;	20 %	
WB(2)L	festival celebrations ;	50 %	
WB(2)M	use of health club and similar facilities ;	50 %	
WB(2)N	use of any other club facilities ;	50 %	
WB(2)O	gifts ; and	50 %	
WB(2)P	scholarships.	50 %	

NO DOUBLE TAXATION

For the purposes of 115WB(1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee.