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# OPINION

**[Valuation of perquisites / fringe benefits after the abolition of FBT]**

A query regarding the valuation of perquisites / fringe benefits after the abolition of fringe benefit tax (FBT), by the Finance (No.2) Act, 2009, has been received from a number of clients and chartered accountants. As is already known to all concerned, the Finance (No.2) Act, 2009, has inserted section 115WM in the Income-Tax Act, 1961 (the Act). As per the aforesaid newly inserted section 115WM, nothing contained in Chapter XII-H shall apply, in respect of any assessment for the assessment year (AY), commencing on 1.4.2010, or any subsequent AY. In other words, the fringe benefit tax (FBT) has been abolished from the AY 2010-11, onwards, i.e. from the financial year (FY) 2009-10, onwards. With the abolition of FBT, a question arises as to the tax-treatment to be given to a number of perquisites / fringe benefits, which were earlier liable to FBT and therefore, not chargeable as perquisites in the hands of the employees, in view of the provisions of the erstwhile section 17(2)(vi) of the Act. In this context, it will be appropriate to refer to the erstwhile section 17(2)(vi), which is reproduced as follows :

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***Salary", "perquisite" and "profits in lieu of salary" defined.***

***17.*** *For the purposes of sections 15 and 16 and of this section,—*

*(2) "perquisite" includes—*

*(vi) the value of any other fringe benefit or amenity (excluding the fringe benefits chargeable to tax under Chapter XII-H) as may be prescribed :*

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Now, the aforesaid clause (vi) of section 17(2) has been substituted by clauses (vi), (vii) and (viii), by the Finance (No.2) Act, 2009, with effect from 1.4.2010. After the aforesaid substitution, the provisions of the aforesaid clause (vi) have been substituted by the provisions of the newly inserted clause (viii), which is reproduced as follows :

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(*viii*) *the value of any other fringe benefit or amenity as may be prescribed:*

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From the comparison of the erstwhile clause (vi) and the newly inserted clause (viii) of section 17(2), it may be seen that the value of all other fringe benefits or amenities are now chargeable to tax in the hands of the employees, because the exclusion thereof in view of the charge of FBT in the hands of the employer, has now been removed.

In the light of the newly inserted clause (viii) of section 17(2), there is a general impression prevailing that the Central Board of Direct Taxes (CBDT) will prescribe the rules for the valuation of other fringe benefits or amenities and it is only thereafter, that the fringe benefits not liable to tax in the hands of the employees, in view of the erstwhile clause (vi) of section 17(2), will be chargeable to tax in their hands.

The aforesaid impression, however, does not appear to be correct. In this connection, we will have to refer to the present rule 3 of the Income-Tax Rules, 1962 (the Rules). Rule 3, as originally enacted, contained the provisions for the valuation of fifteen (15) types of perquisites, which are listed in the Annexure to this opinion. Later, when the provisions for the levy of FBT on employers were introduced, with effect from 1.4.2006, (AY 2006-07), the perquisites mentioned in serial numbers (8) to (15) of the Annexure were omitted, with effect from AY 2006-07, for the reason that the employers had been made liable to pay FBT on these items. The outright omission of the provisions relating to the aforesaid eight items in rule 3, led to a peculiar situation in the cases where certain employers were not liable to pay FBT, under the provisions relating to FBT like individuals, HUFs, charitable institutions, etc. The perquisites / fringe benefits provided by such employers to their employees escaped the FBT net from AY 2006-07 and they could also not be brought to tax in the hands of the employees from that AY. This situation was later on rectified through the Income-Tax [Fourteenth Amendment] Rules, 2007. These rules have amended rule 3, so as to restore the provisions which were earlier omitted, only in respect of employees whose employers were not liable to pay FBT. This amendment is given prospective effect from 1.4.2008, i.e. from the AY 2008-09. As a result, for the AYs 2006-07 and 2007-08, the aforesaid eight items of perquisites / fringe benefits are not taxable in the hands of the concerned employees.

The tax-treatment of the aforesaid fifteen (15) types of perquisites / fringe benefits may be considered as follows :

1. **Perquisites / fringe benefits, the valuation / tax-treatment of which was not affected by the levy of FBT - Part A of Annexure.**

   The following seven items of perquisites / fringe benefits were not affected by the levy of FBT on the employers :

| ***Sr.No.*** | ***The nature of the perquisites / fringe benefits*** | ***Relevant part of rule 3*** |
|---|---|---|
| 1. | Provision of residential accommodation | 3(1) |

| | | |
|---|---|---|
| 2. | Provision of domestic servants | 3(3) |
| 3. | Supply of gas / electricity / water | 3(4) |
| 4. | Educational facilities | 3(5) |
| 5. | Concessional / interest-free loans | 3(7)(i) |
| 6. | Use of employer's movable assets | 3(7)(vii) |
| 7. | Transfer of employer's movable assets | 3(7)(viii) |

If we examine the present provisions of rule 3 of the Rules, then it will be seen that all the aforesaid perquisites / fringe benefits have continued to be chargeable to tax in the hands of the employees, even after the levy of FBT, with effect from 1.4.2006. Thus, there is absolutely no anomaly, as regards the valuation and tax-treatment, in respect of the aforesaid perquisites / fringe benefits, for the purposes of taxation in the hands of the employees.

**2. Perquisites / fringe benefits, the valuation / tax-treatment of which were affected by the levy of FBT – Part B of Annexure.**

The following eight items of perquisites / fringe benefits were not liable to tax in the hands of the employees, after the levy of FBT in respect thereof, in the hands of the employers :

| ***Sr.No.*** | ***The nature of the perquisites / fringe benefits*** | ***Relevant part of rule 3*** |
|---|---|---|
| 1. | Provision of motor-car and other conveyances | 3(2) |
| 2. | Transport facility allowed by transport undertakings | 3(6) |
| 3. | Holiday facilities | 3(7)(ii) |
| 4. | Free food and non-alcoholic beverages | 3(7)(iii) |
| 5. | Gifts on ceremonial occasions | 3(7)(iv) |
| 6. | Credit card facilities | 3(7)(v) |
| 7. | Club facilities | 3(7)(vi) |
| 8. | Other benefits / amenities | 3(7)(ix) |

The first item in the aforesaid list is valuation of perquisite, in respect of provision of motor-car and other conveyances under rule 3(2). If we examine the aforesaid rule 3(2), the initial part of the same reads as follows :

"*(2) (A) The value of perquisite provided by way of use of motor car to an employee by an employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, shall be determined in accordance with the following Table, namely :—*"

Similarly, rule 3(6) relating to valuation of perquisite in respect of transport facility allowed by transport undertakings, is also not applicable only in the case of an employer, who is not liable to

pay FBT under Chapter XII-H of the Act. Same is the position regarding the valuation of perquisites, in respect of other items, viz. holiday facilities, free food and non-alcoholic beverages, gifts on ceremonial occasions, credit card facilities, club facilities and other benefits / amenities, which are covered under rule 3(7)(ii), 3(7)(iii), 3(7)(iv), 3(7)(v), 3(7)(vi) and 3(7)(ix), respectively. It may, thus, be seen that the aforesaid parts of rule 3 were not applicable in respect of certain employees, whose employers were liable to FBT.

Now that the FBT has been omitted by the Finance (No.2) Act, 2009, with effect from 1.4.2010, the embargo relating to FBT in respect of the aforesaid parts of rule 3 will stand removed, with effect from 1.4.2010. In other words, the valuation and tax-treatment of the aforesaid perquisites / fringe benefits will be governed by the respective parts of rule 3 of the Rules, after the omission of FBT, with effect from 1.4.2010.

**3. Thus, there is no vacuum or lacuna regarding the valuation of the various perquisites / fringe benefits, after the omission of FBT.**

If we refer to part A and part B of the Annexure to this opinion, then it will be seen that all the seven perquisites / fringe benefits included in part A continued to be taxable in the hands of the employees, even after the levy of FBT on the employers, under Chapter XII-H of the Act.

However, as regard the perquisites / fringe benefits in part B of the Annexure, the same were not taxable in the hands of the employees, after the levy of FBT, in respect thereof, in the hands of other employers, as per the provisions of the erstwhile section 17(2)(vi) of the Act.

Now that the FBT has been omitted by the Finance (No.2) Act, 2009, with effect from 1.4.2010, the aforesaid eight items of perquisites / fringe benefits included in part B of the Annexure, will also be liable to tax in the hands of the employees.

Therefore, it may be seen that there is no vacuum created after the substitution of the erstwhile clause (vi) by the newly inserted clause (viii) of section 17(2), vide the Finance (No.2) Act, 2009. As a result, all the aforesaid items of perquisites / fringe benefits will be liable to tax in the hands of the employees, as per the provisions of present rule 3 of the Rules, after the omission of FBT by the Finance (No.2) Act, 2009, with effect from 1.4.2010.

However, a doubt may be raised about the validity of the aforesaid conclusion on the ground that the aforesaid clause (viii) of section 17(2) has been inserted, by the Finance (No.2) Act, 2009 and therefore, the rule for the valuation of any other fringe benefit or amenity as referred to, in the newly inserted clause (viii) of section 17(2), will have to be prescribed afresh. Besides, there is an anomaly in the exemption of meal vouchers from FBT, as per the erstwhile section 115WB(2)(B) and the exemption provided in this regard, under rule 3(7)(iii) of the Rules. This anomaly will lead to lot of hardship for companies engaged in the business of meal vouchers.

Notwithstanding the aforesaid contrary view, I am of the view that after the omission of FBT by the Finance (No.2) Act, 2009, with effect from 1.4.2010, even the perquisites / fringe benefits listed in part B of the Annexure will be liable to tax in the hands of the employees.

**4. Conclusion**

In the light of the aforesaid discussion, it may be safely concluded that after the omission of FBT by the Finance (No.2) Act, 2009, all the perquisites / fringe benefits as listed in the Annexure, will be liable to tax in the hands of the employees, as per the provisions of the present rule 3 of the Rules.

It may, however, be added here that the provisions in respect of the valuation of a number of perquisites / fringe benefits, as per the present rule 3, may have to be amended, in order to bring them in conformity with the present business scenario and market conditions.

It is, therefore, advised that all the employers should follow the present rule 3 of the Rules, in order to compute the value of various perquisites in the hands of their employees, for the purpose of deduction of tax at source, under section 192 of the Act.

Place : Pune

Date : 5.9.2009 (S.K.Tyagi)