

In Re: All India Defence Accounts Association

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Court : Allahabad

Decided On : Sep-12-1988

Reported in : (1988)74CTR(All)41; [1989]175ITR494(All);
[1989]43TAXMAN216(All)

Judge : B.N. Misra and ;Om Prakash, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 10(13A), 10(14), 17, 17(1), 17(2) and 17(3)

Appeal No. : Civil Miscellaneous Writ Petition Nos. 328, 366, 400, 470, 473, 474, 476, 535, 557, 566, 580, 582, 6

Appellant : In Re: All India Defence Accounts Association;shailendra Kumar

Respondent : ;union of India (Uoi) and ors.

Advocate for Def. : Bharatji Agrawal and ;Vinod Rastogi, Adv.

Advocate for Pet/Ap. : V.K. Upadhyaya, Adv.

Judgement :

Om Prakash, J.

1. The petitioners, broadly categorised as Central Government employees, employees of Central Government undertakings, bank employees, State

Government employees and General Insurance employees, dispute the taxability of various allowances, namely, dearness allowance, city compensatory allowance, house rent allowance, leave encashment linked with leave travel concession, running allowance, night allowance, etc., in this batch of 20 writ petitions which, for the sake of convenience, are consolidated and disposed of together.

2. Sri V.B. Upadhyaya argued Writ Petition No. 328 of 1988 filed on behalf of the All India Defence Accounts Association, Poona (Allahabad Branch), and a few other writ petitions on behalf of the petitioners. As he advanced arguments at great length in regard to dearness allowance and house rent allowance, his arguments relating to these allowances were adopted by the other learned counsel for the petitioners.

3. The submission of Sri Upadhyaya is that these allowances do not amount to 'income' under the provisions of the Income-tax Act, 1961 (hereinafter referred to as 'the Act, 1961'), and, therefore, they are not liable to tax. Sri Upadhyaya being very firm in his submission that these allowances are not in the nature of income, no argument as an alternative was made to claim exemption under Section 10 of the Act, 1961, in respect of such receipts. So, the only question for consideration is whether the receipts on account of city compensatory allowance, house rent allowance and dearness allowance, are in the nature of income entailing tax liability.

4. What is income Section 2(24) of the Act, 1961, gives an inclusive definition of the word 'income' and says, so far as relevant, that 'income' includes-

'(i) Profits and gains ;...

(iii) the value of any perquisite or profit in lieu of salary taxable under Clauses (2) and (3) of Section 17 ; ...'

5. Section 14 sets out heads of income. If any receipt is income within the meaning of Section 2(24), then the same will be brought to tax under one of the heads enumerated under Section 14.

6. The contention of the Revenue is that if these three allowances are held to be income under Section 2(24), then they would be chargeable to tax under the head 'Salaries'. Sri Upadhyaya submitted that the receipts in question could not be charged under the head 'salary', as defined by Section 17. Section 15 defines what is chargeable to tax under the head 'Salaries'. Section 16 refers to the deductions that may be claimed in the computation of income under the head 'Salaries'. Section 17 bearing the caption "Salary", 'perquisite' and 'profits in lieu of salary' defined, so far as relevant, says that for the purposes of Sections 15 and 16 and of this section,--

'(1) 'Salary' includes ...

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages ;...

(2) 'perquisite' includes-

(i) the value of rent-free accommodation provided to the assessee by his employer ;

(ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer ;

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases--...

(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee ; and ...

(3) 'profits in lieu of salary' includes--...

(ii) any payment [other than any payment referred to in Clause (10), Clause (10A), Clause (10B), Clause (11), Clause (12) or Clause (13A) of Section 10], due to or received by an assessee from an employer or a former employer or from a provident or other fund (not being an approved superannuation fund), to the extent to which it does not consist of contributions by the assessee or interest on such contributions.'

7. If city compensatory allowance, house rent allowance and dearness allowance are found to be income under Section 2(24), then the next question will arise whether such receipts are chargeable under the head 'Salaries' under Section 14 read with Section 17. If these receipts constitute income, but do not fall under the head 'Salary' as defined by Section 17, then the receipts could not be taxed under any other head, as stated under Section 14. By now it is well settled that any receipt relatable to a particular head and which cannot be taxed for any reason under that head, cannot be taxed as 'income from other sources' under Section 56 (See *Nalinikant Ambalal Mody v. S.A.L. Narayan Row*, CIT : [1966]61ITR428(SC)). So, either of these receipts can be taxed under the head 'Salary' as defined by Section 17 or not at all.

8. To revert to the main question whether city compensatory allowance, house rent allowance and dearness allowance are of income character, we may first take into consideration as to how these receipts have been treated by the Legislature so far. Section 10 embodies several exemptions. Exemption implies or postulates income. If a given receipt is not of income character, then the same is not at all included in the total income. If a receipt is of income character, but exempted under Section 10, then the same, while computing the total income, will be deducted. Section 10(13A) clearly provides exemption with regard to house rent allowance to the extent expenditure has been actually incurred towards the payment of rent. The Explanation to Clause (14) of Section 10, which was inserted with retrospective effect from April 1, 1962, nullified the judgment of the Bombay High Court in *CIT v. D.R. Phatak* : [1975]99ITR14(Bom), in which it was held that city compensatory allowance was exempt under Section 10(14). The aforesaid judgment was not accepted by the Department and, therefore, the Explanation was added to Clause (14) of Section 10 with retrospective effect from April 1962, i.e., when the Act, 1961, came into force so that the exemption with regard to city compensatory allowance might not be allowed following the judgment of the Bombay High Court. Clause (14) of Section 10 has further been amended by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989, applicable to the assessment year 1989-90. Clause (14), amended with effect from April 1, 1989, runs as follows ;

'(14) (i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of Clause (2) of Section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as the Central Government may, by notification in the Official Gazette, specify, to the extent to which such expenses are actually incurred for that purpose ;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as the Central Government may, by notification in the Official Gazette, specify, to the extent specified in the notification.'

9. The above reproduced clause is divided into two parts ; the first part is couched in the same language in which the existing clause (14) stands and the second part takes within its ambit dearness allowance, which is granted to an employee to compensate him for the increased cost of living. Under both the parts of the newly amended clause, exemption is confined to the amount as notified in the Official Gazette by the Central Government. From Clauses (13A) and (14) of Section 10, it is abundantly clear that the Legislature always treated city compensatory allowance, house rent allowance and dearness allowance as income. So far as house rent allowance is concerned, exemption has been granted in respect of the amount actually incurred towards the payment of rent. By the Explanation to Clause (14), the Legislature clearly negated the view of the Bombay High Court that city compensatory allowance was exempt under Section 10(14). By Section 10(14)(ii), the Legislature has clearly provided that an allowance in the nature of dearness allowance granted to compensate an employee for the increased cost of living could be exempted by the Central Government to the extent as notified in the Official Gazette. Though Clause (14) as amended with effect from April 1, 1989, will be applicable to future assessment years, i.e., assessment year 1989-90 onwards, it furnishes enough clue that the Legislature all along has treated dearness allowance as income in the past and has made a provision for future exemption subject to the condition contained therein. In J.K. Steel Ltd. v. Union of

India, [1970] : 1978(2)ELT355(SC) , the Supreme Court emphasised the importance of 'Exemption' thus (headnote) :

'In the case of fiscal statutes, it may not be inappropriate to take into consideration the exemptions granted in interpreting the nature and scope of the impost. Hence for finding out the scope of a particular levy, notifications issued by the Executive Government providing for exemption from that levy can be looked into as they disclose the overall scheme.'

10. The Supreme Court further held in para 38 on the same page (head-note) :

'The exemption granted under the various notifications issued under Rule 8 (1) of the Rules framed under Section 38 of the Central Excises and Salt Act, 1944, provide a clue to the scope of levy made under Schedule I, item 26AA.'

11. When notifications issued by the Government can be taken into aid to find out the scheme of the Act and the scope of the levy, the exemptions provided by the Legislature in the Act itself will, a fortiori, furnish an infallible clue to the income character of city compensatory allowance, house rent allowance and dearness allowance. In *Kailash Nath v. State of U. P.* : AIR 1957 SC790 , the Supreme Court held (headnote of 1957 AIR) :

'Notification No. ST--6499--X-901(20) 48 having been made in accordance with the power conferred by the statute has statutory force and validity and, therefore, the exemption under the notification is as if it is contained in the parent Act itself.'

12. When no exemption has been provided under the parent Act, but under the notification validly issued, and when in that situation, according to the Supreme Court, it can be held that exemption under the notification is as if it is contained in the parent Act itself, we fail to understand as to why in view of Section 10(13A) and Section 10(14) including Sections 10(14)(i) and 10(14)(ii), city compensatory allowance, house rent allowance, dearness allowance could not be said to exist in Section 17 of the Act, 1961. Section 10(13A) and Section 10(14) clearly indicate the understanding and the intention of the Legislature. From the very fact that exemption has been provided with regard to house rent allowance with a rider

under Section 10(13A) and that exemption has been specifically denied under the Explanation to Section 10(14) with regard to city compensatory allowance, house rent allowance and dearness allowance and these allowances are covered by Sections 10(14)(i) and 10(14)(ii), respectively, it is manifest that the Legislature treated all these allowances as income. But for the exemption, they will be taxed under the head 'Salary' as defined under Section 17. What is implied in Section 10(13A) and Section 10(14) including Sections 10(14)(i) and 10(14)(ii) should clearly reflect in Section 17--the latter is the mirror of the former. The approach that when city compensatory allowance, house rent allowance and dearness allowance are not written in so many words in. Section 17 and, therefore, they cannot be taken to be 'perquisites' or 'profits in lieu of or in addition to any salary' within the meaning of Section 17, is an attempt at oversimplification. The contents of Section 17 have to be seen in totality and Section 10(13A) and Section 10(14) read with Sections 10(14)(i) and 10(14)(ii) furnish a very valuable clue in regard to the true scope or the overall scheme of Section 17. Section 10(13A) and Section 10(14), read with Sections 10(14)(i) & 10(14)(ii), bring to the surface what is dormant, inherent and implied in Section 17.

13. Section 17 gives an inclusive definition of the word 'salary'. Section 17(1)(iv) reads that salary includes any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. Clause (2) of Section 17 again gives an inclusive definition of the word 'perquisite' Clause (3) of Section 17 defines the expression 'profits in lieu of salary' and this too is an inclusive definition. The word 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. Thus, where 'includes' has an extended force, it adds to the word or phrase a meaning which does not naturally belong to it. Section 17(1)(iv) in particular and Section 17 in general refer to several things which, in ordinary connotation, do not belong to 'salary' In Section 17(1)(iv), for example, 'perquisites' or 'profits in lieu of or in addition to any salary or wages' ordinarily do not form part of salary, but they have been made part of the salary by virtue of the extended definition. The scope of an inclusive definition cannot be restricted to those words only which occur in such definition, but an inclusive definition will extend to so many other things, which are not talked of in the

section. Therefore, we do not find any warrant in the submission of Sri Upadhyaya that the definition of the word 'salary' given in Section 17 cannot extend to city compensatory allowance, house rent allowance and dearness allowance which, in our view, are 'perquisites' under Section 17(2). So far as city compensatory allowance and dearness allowance are concerned, they may partake of the character of 'profit in lieu of salary' too within the meaning of Section 17(3)(ii), as these provisions are not mutually exclusive, but to some extent overlap each other. House rent allowance being exempted under Section 10(13A), cannot fall under Section 17(3)(ii).

14. Sri Upadhyaya relying on *South Gujarat Roofing Tiles Manufacturers' Association v. State of Gujarat* [1977] : [1977]1SCR878 , submits that though Section 17(2) gives an inclusive definition of the word 'perquisite', in reality it is exhaustive. What he says is that all the sub-clauses of Clause (2) of Section 17 refer to benefits only and none of the sub-clauses refers to anything which is not a benefit, In short, the submission is that the inclusive definition enlarges the meaning of the word and since no instance of dissimilarity has been given in any of the sub-clauses, the definition in Section 17(2) of the word 'perquisite' should be taken to be restrictive. We do not see any force in his submission that the definition of the word 'perquisite' in Section 17(2) is exhaustive and that could not take within its ambit the special allowances of the nature of city compensatory allowance, house rent allowance and dearness allowance; In *CIT v. L.W. Russel* : [1964]53ITR91(SC) , the Supreme Court interpreted the word 'perquisite', occurring in Explanation 1 to Section 7(1) of the Indian Income-tax Act, 1922. corresponding to Section 17(2) of the Act, 1961, and then their Lordships clearly observed at p. 96 :

'The Explanation 1 to Sub-section (1) of Section 7 of the Act gives an inclusive definition.'

15. If the submission of Sri Upadhyaya that Section 17(2) though it gives an inclusive definition is exhaustive and could not extend to the special allowances in the nature of city compensatory allowance, house rent allowance and dearness allowance were correct, then the Supreme Court would not have held the

corresponding provision as having given an 'inclusive' definition. When Explanation 1 to Section 7(1) of the Act, 1922, gave an inclusive definition, in the opinion of the Supreme Court, on the same analogy, Section 17(2) of the Act of 1961 could not be said to be exhaustive.

16. What is a perquisite Since the definition of the word 'perquisite' in Section 17(2) is inclusive and not exhaustive, we will be fully justified in resorting to the ordinary dictionary meaning of the word 'perquisite'. According to the dictionary meaning by Murray, 'perquisite' means 'any casual emoluments, fee or profit attached to an office in addition to salary or wages'. Webster defines it as : 'Gain or profit incidental to an employment in addition to regular salary or wages, especially one accepted or promised.' The House of Lords in *Owen v. Pook* [1969] 74 ITR 147 held that 'perquisite' indicates a personal advantage to the employee. In 'Words and Phrases', Permanent Edition, Volume 32, *Pep-Petit*, a 'perquisite' is something received incidental and in addition to regular wages, salary, etc. *Jowitt's Dictionary of English Law* defines 'perquisite' as meaning anything acquired by the holder of a place or office over and above the wages or salary thereof. 'Emoluments or incidental profits attached to an office or official position, beyond the salary or regular fees' are perquisites as per *Black's Law Dictionary*. From all this, it follows that a 'perquisite' is an advantage received by the holder of an office over and above the salary. Any benefit received incidental to employment in excess of salary is a 'perquisite'. Perquisite postulates relationship of employer and employee. Perquisite is a benefit attached to the office. We have no hesitation in holding that city compensatory allowance, house rent allowance and dearness allowance are benefits attached to an office and incidental to the employment. 'Perquisite' is what is received by an employee over and above the salary. Any additional benefit incidental to employment is a perquisite.

17. What are 'profits in lieu of salary'. Under this heading, three items are included, namely, (a) terminal payments, (b) compensation for modification of service terms, falling under Section 17(3)(i), and (c) other payments received from an employer, falling under Section 17(3)(ii). Profits at (a) and (b) are not germane to these cases. Other payments received from the employer falling under Section 17(3)(ii)

refer to any payment due to or received by an assessee from his employer or former employer and is taxable being profit within the meaning of Section 17(3)(ii). This is a comprehensive provision by virtue of which all payments made by an employer to the employee, whether made in pursuance of a legal obligation or voluntarily, are brought under 'profits in lieu of salary'. In short, except for the terminal and other payments specifically exempted under Clauses (10) to (13A) of Section 10, all other payments received by an employee from an employer or former employer are liable to tax under this head. This section cannot include those payments which are made not on account of master and servant relationship, but on account of personal consideration or for reasons not connected with the employment. The expression 'profit in lieu of salary' occurring in Section 17(3)(ii) came up for interpretation before the Supreme Court in *CIT v. G. Hyatt* : [1971]80ITR177(SC) , but the Supreme Court cut short the matter saying at page 179 :

'In our opinion, the meaning of Section 17(3)(ii) is plain and unambiguous. Hence, there is no need to call into aid any of the rules of construction as was sought to be done by the High Court.'

18. In our view, the essential ingredients that are to be satisfied for the purpose of application of the provisions, enacted in Section 17(3)(ii), are :

- (i) that the payment must be relatable to employment ;
- (ii) that it must not be based on personal or extra-employment considerations ; and
- (iii) that it must not be a payment falling under any of the clauses of Section 10, specified in the parenthetical clause of Section 17(3)(ii).

19. All these conditions stand fully satisfied so far as the city compensatory allowance and dearness allowance are concerned. House rent allowance is excluded from the application of Section 17(3)(ii) as it falls under Section 10(13A), specially in the parenthetical clause of Section 17(3)(ii). For the reasons, we hold, whereas house rent allowance is only a perquisite within the meaning of Section 17(2), city compensatory allowance and dearness allowance may be 'perquisites'

within the meaning of Section 17(2) and also 'profits in lieu of salary' under Section 17(3)(ii), being profits in addition to the salary.

20. In fact, there is not much difference between a perquisite as defined by Section 17(2) and the payments made in lieu of or in addition to salary, as the latter are also in the nature of perquisites. The view in Sampath Iyengar on Income Tax, as edited recently by Justice Ranganathan, is that the payments specified in the parenthetical clause of Section 17(3)(ii) are in the nature of perquisites and, therefore, it would seem inappropriate to exclude them from the definition of 'profit in lieu of salary'. That is why Section 17(2) and Section 17(3)(ii) are to some extent overlapping.

21. Relying on the fundamental Rule 9(5) governing the service conditions of the Central Government employees and all those to whom they are extended or by whom they are adopted, Sri Upadhyaya urged that city compensatory allowance and house rent allowance are in the nature of compensatory allowances, which means an allowance granted to meet personal expenditure necessitated by special circumstances in which duty is performed. It was stated that an employee gets city compensatory allowance because of his posting in a bigger town where he incurs greater expenditure than those who perform their duties in smaller towns, which are cheaper. It is, therefore, said by Sri Upadhyaya that city compensatory allowance does not result in a benefit, but is merely reimbursement of the expenditure incurred by the petitioners by virtue of the special circumstances, i.e., their posting in bigger cities. The same argument he made in connection with the house rent allowance. So far as the dearness allowance is concerned, he submitted that the same is granted to compensate the employees for the increased cost of living and to neutralise the erosion in the money value. In short, the submission is that these allowances do not result in an advantage or benefit to the petitioner and, therefore, are not 'perquisites' as per the ordinary dictionary meaning of the word 'perquisite'. It is undisputed that house rent allowance is awarded to the petitioners irrespective of the fact whether they actually incur expenditure on rent or not and whether they live in rented accommodation or in their own house. It shows that house rent allowance is not linked with the actual expenditure incurred. This type of allowance will surely be a

'perquisite' within the meaning of Section 17(1)(iv) read with Clause (2). To do justice to those who actually incur expenditure on rent, a provision has been made in Section 10(13A), as exemption from tax liability has been given in respect of the allowance actually incurred on payment of rent. Then come city compensatory allowance and dearness allowance, which the petitioners continue to get irrespective of the fact whether they actually incur the expenditure or not. Therefore, strictly speaking, house rent allowance, city compensatory allowance and dearness allowance cannot be said to be reimbursement of the expenditure actually incurred in the performance of the duties.

22. Undue emphasis was laid by Sri Upadhyaya on the decision of the House of Lords in *Owen v. Pook* [1969] 74 ITR 147. Since the arguments of Sri Upadhyaya mostly revolve round this case, it will be apposite to deal with this decision in detail. Dr. Owen was a general medical practitioner at Fishguard. He also held two part-time appointments with the South West Wales Hospital Management Committee at a hospital in Haverfordwest, some 15 miles from Fishguard. Under the service conditions, the Management committee paid him travelling expenses at a fixed rate per mile for a single journey between Fishguard and the hospital, limited to a single journey of 10 miles, though the actual distance was 15 miles. He bore the costs of the additional five miles of travel himself. On these facts, Lord Guest held (at page 155) :

'The travelling expenses were, in my view, necessarily incurred in the performance of the duties of his office.'

23. Lord Pearce, who concurred with Lord Guest, observed on page 156 :

'Nobody suggests that the reimbursements were over-generous. The appellant was in fact reimbursed only in respect of 10 miles out of each 15 mile journey and had to bear the cost of 5 miles of the journey himself. The commissioners found, as I would expect, that 'his travelling expenses to and from ... an emergency were wholly, exclusively and necessarily incurred or expended in the duties of that office'.'

24. Lord Pearce, therefore, said (at page 158) :

'The reimbursements of actual expenses are clearly not intended by 'salaries', 'fees', 'wages' or 'profits'.'

25. Lord Donovan, while concurring with the Lord Guest and Lord Pearce and allowing the appeal, observed on page 159 :

'... and that Dr. Owen bears the cost himself of the additional five miles between Fishguard and Haverfordwest, it may fairly be assumed that there was no profit element in the travelling allowances he received in these two years, but that, on the contrary they left him out of pocket.'

26. Laying emphasis on the fact that the reimbursements were for the actual travelling expenses incurred, the House of Lords took the view that the payment was to fill the hole in emoluments and not as an advantage or profit to the appellant. This decision does not militate against the scheme of the Act of 1961, in that Section 10(14) thereof exempts the special allowance or benefit specially granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose. Since we are not dealing with a case of reimbursement of necessary disbursement, the case of *Owen v. Pook* [1969] 74 ITR 147 cannot be pressed into service.

27. In our opinion, to the cases in hand, the rule laid down in *Fergusson v. Noble* [1919] 7 TC 176 and in *Cony v. Robinson* [1933] 18 TC 411 is fully applicable. In *Fergusson's* case [1919] 7 TC 176, a detective officer received clothing allowance from the employer in lieu of obtaining his uniform as a policeman, free of charge. He was to buy a suit of clothes for official duties out of the allowance. Detective officers were not given police uniform, because, being in uniform, they would have been easily identified. The clothing allowance was held taxable, because that was granted to the detective officer by virtue of his office. Lord Skerrington briefly stated the legal position thus (at page 181):

'I must assume further that this money became the property of the detective officer in the ordinary meaning of the term, and he was simply bound in consideration of having received that to supply himself with clothes which would satisfy the Chief

Constable and also the Government Inspector. I see no reason to doubt that if he could have provided, himself with suitable clothing for a smaller sum than 11 14s. 3d. the difference would have been his own profit and that he would not have been bound to account for this. On the other hand, if the clothes cost more than that sum, it is quite plain he was bound to provide the difference out of his own pocket. That shows that this allowance was simply a contribution towards his expenses, in other words, pecuniary relief given to the man, in other words, an addition to his emoluments.'

28. To come to the second case, Mr. Corry (appellant) was a civil servant. He was appointed deputy cashier at Singapore and in that position, he received 'colonial allowance', which was in fact, an allowance in addition to income designed to meet the hardship of living abroad and the extra expenditure likely to be incurred by the official who, for one reason or the other connected with his work, was compelled to live abroad. Finlay J., in the King's Bench Division, held (at pp. 421, 422) :

'. . . . public offices and employments under the Admiralty, under the Treasury, under the War Office, and so on, are taxable, and taxable wherever the particular person may happen to perform the duties of his office.' What it really comes to is that extra money does go into the appellant's pocket. Extra money goes into his pocket partly in order that he may be able to provide himself with a house, and partly in order that he may be able to meet those expenses incidental to residence in a far off country in the tropics.'

29. From these authorities, it appears that what is received by an employee by virtue of his office in addition to emoluments is taxable.

30. Fundamental Rule 44 says that subject to the general rule that the amount of compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, the Central Government may grant such allowance to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn. Relying on this rule, Sri Upadhyaya urged that no benefit could result from the compensatory allowance, because it is so regulated that the allowance does not become a source of profit to the recipients. This rule does not lead to the

conclusion that house rent allowance, city compensatory allowance and dearness allowance are reimbursements of necessary disbursements. It is only for determination of compensatory allowance that the Central Government will take care that grant of compensatory allowance does not become a source of profit to the employees, but it does not mean that the allowances in the nature of house rent allowance, city compensatory allowance and dearness allowance do not amount to an advantage. The allowances are surely in addition to pay and this is clearly borne out from the heading of Chapter V, which runs thus : 'Chapter V : Additions to pay' in Swamy's Compilation of Fundamental Rules & Supplementary Rules, Part I, General Rules. Since house rent allowance, city compensatory allowance and dearness allowance are paid to the employees by virtue of their employment over and above their salary, they are 'perquisites' within the meaning of Section 17(1)(iv) read with Section 17(2). Since Section 17(2) gives an inclusive definition, it is not necessary, for us to hold as to under which of the sub-clauses of Section 17(2) do the allowances fall. If they do not fall in any of the five sub-clauses of Section 17(2), they will be deemed to be a part of Section 17(2), as appears from the overall scheme of the Act of 1961, for which the provisions enacted under Sections 10(13A) and 10(14) hold the clue.

31. Sri Upadhyaya pointedly drew our attention to Sub-clause (iv) of Section 17(1) and urged that when several words stand in collocation, then they will acquire a uniform meaning. To elaborate his argument, Sri Upadhyaya argued that the term 'fees' and 'commissions', occurring in Clause (iv) of Section 17(1) clearly indicate that they are paid for rendering services. The quintessence of Sri Upadhyaya's submission is that the word 'perquisites' occurring in Clause (iv) of Section 17(1) will have the same meaning which the remaining words standing in collocation, signify. As fees, commissions, salary and wages are paid for rendering services, perquisites, Sri Upadhyaya says, also should be deemed to have been granted for rendering services. He further says that, in fact, none of the allowances in question is granted for rendering the services, as house rent allowance and city compensatory allowance are granted to the employees on account of the special circumstances in which duties are performed and the dear-ness allowance is granted to compensate the increased cost of living and to neutralise the erosion in the money value. The submission is devoid of force. When the term 'perquisite'

has been defined in Clause (2) of Section 17, it is futile to interpret the word 'perquisite' occurring in Clause (iv) of Section 17(1) sans reference to Clause (2) of Section 17.

32. In *General Officer Commanding-in-Chief, Central Command v. Punni Lal* [1970] ALJ 161, the Allahabad High Court held that the dearness allowance received by the respondent could not be included in the expression 'salary' defined by Rule 2(e) of the Cantonment Fund Servants Rules, 1937. Relying on this decision, Sri Upadhyaya vehemently argued that dearness allowance, which is granted wholly for a different consideration, could not be 'salary' within the meaning of Section 17. This argument seems to be fallacious, inasmuch as Section 17 gives an inclusive definition and, therefore, by virtue of the extended or enlarged definition, it may include so many things which ordinarily do not fall within the concept of salary. Moreover, the aforesaid Rules, 1937, are not *pari materia* to the Act of 1961.

33. The question for consideration is whether to examine the scheme of Act of 1961, aid can be taken from the Fundamental Rules governing the service conditions of the Central Government employees or from the provisions of a statute, which is not cognate or *pari materia* to the Act of 1961. The Income-tax Act is a self-contained code and the taxability of house rent allowance, city compensatory allowance and dearness allowance or of any other allowance will have to be seen only within the scheme of the Act of 1961. In *S. Mohan Lal v. R. Kondiah*, : [1979]3SCR12, the Supreme Court succinctly stated the legal position thus (p. 1134.) :

'It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act, more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand, it is a sound, and indeed, a well-known principle of construction that meaning of words and expressions

used in an Act must take their colour from the context in which they appear.'

34. Following this rule, we are of the view that Sri Upadhyaya cannot press into service the case of Punni Lal [1970] ALJ 161.

35. Then, we take up a few cases relied on by Sri Upadhyaya. In Bishambar Dayal v. CIT : [1976]103ITR813(MP) , the question for consideration was whether the compensatory allowance received by the Chief Judge of the Madhya Pradesh High Court under Article 222(2) of the Constitution of India, can or cannot be included in his total income under the head 'Salary', as defined by Section 17 of the Act, 1961. Relying on the rule laid down in CIT v. Phatak (D. R.) : [1975]99ITR14(Bom) and the Fundamental Rules defining compensatory allowance, the Madhya Pradesh High Court took the view that the allowance paid to the judge was not taxable. In CIT v. R.R. Bajoria : [1988]169ITR162(Cal) , the question was whether city compensatory allowance is taxable. Relying on Fundamental Rule 44 that compensatory allowance will be so regulated by the Central Government as not to become a source of profit to the recipient and the decision of the Madhya Pradesh High Court in the case of Bishambar Dayal [1976] 103 1TR 813, the Calcutta High Court held that the city compensatory allowance was not taxable. Both these decisions run counter to the ratio of the case, S. Mohan Lal, : [1979]3SCR12 , as they were rendered in disregard of the fact that the Income-tax Act is a self-contained code to judge the taxability of a particular receipt and that Fundamental Rules cannot be taken into aid. We are, therefore, afraid that those decisions cannot be relied on to reach the correct conclusion in the instant cases.

36. Sri Upadhyaya also relied on the two decisions of the Punjab and Haryana High Court, CIT v. Justice S.C. Mittal and CIT v. M.S. Gujral . In the former, the assessee occupied his own house and in the latter, occupied the house belonging to the Hindu undivided family. It was held that the house rent allowance paid to the assesseees was exempt. The exemption postulates that house rent allowance was income and, therefore, no advantage could be taken from these two authorities.

37. Then, we turn to other allowances, the taxability of which has been disputed by some of the petitioners. In Writ Petition No. 1295 of 1988, Diesel Locomotive

Workshop Mazdoor Sangh v. Union of India, the additional contention of the petitioners is that reimbursement of tuition fee is not taxable. The petitioners have filed Railway Services (Educational Assistance) Order, 1985, para 18 of which deals with reimbursement of tuition fee. Para 18 says that a railway servant shall be eligible to the reimbursement of tuition fee payable and actually paid in respect of each child, provided that no children's educational allowance under these orders is admissible to him.

38. Sri Bharatji, learned counsel for the Revenue, says that reimbursement of tuition fee falls under Sub-clause (iv) of Section 17(2). The reimbursement is due to the employee and no payment is directly made by the employer in respect of the employee's obligation to the educational authorities and, therefore, the reimbursement will not be covered by Sub-clause (iv) of Section 17(2). In Travancore Tea Estates Co. Ltd. v. CIT : [1985]153ITR444(Ker) , the Kerala High Court gave the same reasoning and we are in complete agreement with that decision. However, this type of reimbursement is fully covered by Section 17(3)(ii), the ingredients of which have been stated by us in the foregoing paragraphs, inasmuch as the payment is not covered by any of the clauses of Section 10, as mentioned in the parenthetical clause of Section 17(3)(ii).

39. In Writ Petition No. 604 of 1988, the petitioners, employees of the State Bank of India, inter alia, dispute the taxability of leave encashment linked with leave travel concession. In M. Krishna Murthy v. CIT : [1985]152ITR163(AP) , the question arose whether the amount received as encashment of leave by an employee is taxable. The Andhra Pradesh High Court took the view that the amount of leave encashment was taxable being 'profits in lieu of salary' falling under Section 17(3)(ii). We fully agree with the reasoning given by that High Court and following this decision and for the reasons given hereinbefore, we hold that leave encashment linked with leave travel concession is taxable, being 'profits in lieu of salary' within the meaning of Section 17(3)(ii).

40. In Writ Petition No. 474 of 1988. All India Loco Running Staff Association v. Union of India, the petitioners, inter alia, contend that running allowance and night allowance granted to them are not taxable. There is nothing to show that these

allowances are reimbursements of necessary disbursements ; rather they come to the employees as an advantage by virtue of their employment. They are, therefore, in our view, 'perquisites' within the meaning of Section 17(1)(iv) read with Section 17(2) and hence are taxable under the head 'Salaries' under Section 14, read with Section 17.

41. Before parting with the case, we would like to record our appreciation for Sri Upadhyaya, learned counsel for the petitioner, and Sri Bharatji and Sri Vinod Rastogi, learned counsel for the Revenue. But for their able assistance, it would have been quite difficult for us to have decided the questions on which precedents are available both ways for and against.

42. In the result, all the writ petitions fail and are dismissed. The stay orders passed in all these writ petitions on various dates are vacated. In the facts and circumstances of the case, there will be no order as to costs.