

Tata Workers' Union and Anr. Vs. Union of India (UOi) and Ors.

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Court : Jharkhand

Decided On : Jun-14-2002

Reported in : (2002)176CTR(Jharkhand)325; [2002]256ITR725(Jharkhand)

Judge : V.K. Gupta, C.J. and; M.Y. Eqbal, J.

Acts : [Income Tax Act, 1961](#) - Sections 17 and 295; Income Tax Rules, 1962 - Rule 3; Income Tax (Amendment) Rules, 2001

Appeal No. : W.P. (T.) Nos. 1393, 1500, 1599, 1703, 2084, 2090 and 2835 of 2002

Appellant : Tata Workers' Union and Anr.

Respondent : Union of India (UOi) and Ors.

Advocate for Def. : K.K. Jhunjhunwala, Ajay Poddar, P.K. Prasad and Rajesh Shankar

Advocate for Pet/Ap. : S.B. Gadodia, A.B. Kumar, A.K. Mishra, Rajiv Ranjan, V.P. Singh, A.K. Sinha, Sat Prakash and Shalini Jha

Disposition : Petitions dismissed

Judgement :

V.K. Gupta, C.J.

1. By this common judgment, we propose to dispose of the abovementioned batch of writ applications wherein the vires and legality of Notification No. S. O. 940(E), dated September 25, 2001 (see [2001] 251 ITR 81), has been challenged. Vide this impugned notification, the Central Board of Direct Taxes, Department of Revenue, Government of India in the Ministry of Finance, has brought about an amendment in the Income-tax Rules, 1962. We are concerned in this batch of petitions only with respect to the substitution of new rule 3 with the old one.

Substituted rule 3 reads thus :

'3. Valuation of perquisites.--For the purpose of computing the income chargeable under the head 'Salaries', the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely :--

(1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below : . . .

Provided that nothing contained in this sub-rule would be applicable to any accommodation located in a 'remote area' provided to an employee working at a mining site or an onshore oil exploration site, or a project execution site or an accommodation provided in an offshore site of similar nature:

Provided further that where on account of his transfer from one place to another, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower value with reference to the Table above for a period not exceeding 90 days and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table.

(2) (A) The value of perquisite provided by way of use of motor car shall be determined on the basis provided in the Table II below.'

Table I of the newly introduced rule 3 by virtue of the aforesaid amendment at Sl. No. 2 relates to the category of the perquisite (accommodation). This category relates to the accommodation provided by an employer other than the Union or the State Government. The category of such accommodation as a perquisite as occurring in the Table I appended to rule 3 reads thus :

'2.(2) Where the accommodation is provided by any other employer and

The value of perquisite as determined under column (3) and increased by 10 percent, per annum of the cost of furniture (including television sets, radiosets, refrigerators, other house hold appliances, air conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.'

(a) where the accommodation is owned by the employer, or

(i) 10 per cent of salary in cities having population exceeding 4 lakhs as per 1991 census;

(ii) 7.5 per cent, of salary in other cities, in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee

(b) where the accommodation is taken on lease or rent by the employer

Actual amount of lease rental paid or payable by the employer or 10 percent, of salary whichever is lower as reduced by the rent, if any, actually paid by the employee

2. The impugned notification has been assailed mainly on two grounds. Firstly that it gives arbitrary and unfettered powers to the Revenue because computation of the perquisite on the basis of the percentage of the salary (10 per cent of salary and 7.5 per cent, of salary) as occurring in column 3 of the Table has no nexus with the object sought to be achieved and is not based on an intelligible differentia. It has also been argued and urged that there can be cases where the houses

allotted to the employees by the employer may be such lower rental that 10 per cent. or even 7.5 per cent. of the salary may be considered to be very much on the higher side.

3. The other challenge to the impugned notification is that it made the amendment applicable retrospectively.

4. We have heard learned counsel for the parties and have given our careful considerations to the rival contentions advanced at the Bar.

5. The impugned amendment was brought about as a consequence of the Budget Speech by the Finance Minister in Parliament. In the Budget Speech the Finance Minister very pertinently observed that the Revenue had been facing some difficulties in the past with respect to the assessment and computation of the perquisites relating to the accommodation.

6. Section 17 of the Income-tax Act, 1961, in relation to 'salary', in Sub-section (2) stipulates that 'perquisite' includes the value of rent-free accommodation provided to the assessee by his employer or the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer.

7. Section 295 of the Act gives powers to the Board to make rules and subsection (2) thereof undoubtedly empowers the Board to make rules for the determination of the value of any perquisite chargeable to tax under the Act in such manner and on such basis as appears to the Board to be proper and reasonable.

8. In the counter affidavit filed by the respondents in answer to the writ application, it has been averred that the Finance Minister in his Budget Speech had outlined that 'the value of perquisites, benefit or amenities shall be determined on the basis of their cost to the employer except in respect of house and cars where different criteria would be adopted for simplicity'. It has also been explained in the counter affidavit that in adopting and applying rule 3 as it existed prior to the impugned amendment, there being three classes of employees, the Revenue was facing difficulties with respect to various matters including the determination of the fair market value of the property and it was found to be very cumbersome. Also it did

not take into account high rent in the metro towns. It has also been averred in the counter affidavit that the estimation of fair rent had been the subject-matter of litigation at various levels mainly on account of the fact that legislation with respect to rents being State subject differed from State to State. The value of fair rent cannot be determined as the standard rents differ from municipal area to municipal area also. It was accordingly decided to simplify and rationalise the procedure for determining the perquisite value and accordingly as per the impugned rules, the employees have been divided only in two categories.

9. The respondents have also in the counter affidavit explained the rationale for the distinction between Government employees and the private employees. It has been explained that for purposes of the valuation of the perquisites relating to accommodation, the employees have been classified under the impugned amended rule into only two categories, namely, Government (Central and State) employees and others. To maintain continuity and equity with their remuneration and a variety of other benefits available in other sectors, the earlier system of valuation of perquisites relating to accommodation on the basis of rent payable as per rules framed by the Government has been retained for Central and State Government employees. For others, that is, employees belonging to private as well as public sector undertakings, it has been decided that the valuation of the perquisite relating to accommodation should be 10 per cent. or 7.5 per cent. of the salary as the case may be. As per the version of the respondents, this was decided in keeping with the recommendation of the expert group constituted to rationalise and simplify income-tax laws.

10. On giving our thoughtful consideration and looking to the reasonableness of the classification between cities with population of less than four lakhs and others with bigger population, we do not find anything unreasonable in the value being fixed at 7.5 per cent. and 10 per cent., respectively, of the salary. We do not consider this unreasonable from any yardstick or parameter. According to us, the amended rule 3 does appear to be a step in the right direction especially when looking to the simplification aspect of the same.

11. We accordingly find that the impugned notification does not suffer from any arbitrariness because in our considered opinion, for rationalising and simplifying the procedure, the Board brought about the impugned notification otherwise on account of cumbersome procedure as per the old rule, various difficulties are being faced.

12. In so far as the retrospective effect of the impugned notification is concerned, our attention was drawn to Sub-section (4) of Section 295 of the Act. Sub-section (4) reads thus :

'(4) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assessees.'

13. Undoubtedly, Sub-section (4) of Section 295 does give the power to the Board to apply the rules with retrospective effect, but it also at the same time clearly requires that no retrospective effect shall be given to any rule if it tends to prejudicially affect the interests of the assessee.

14. Mr. Jhunhunwalla, learned counsel appearing for the Revenue, invited our attention to Circular No. 15 dated December 12, 2001 (see : [2002]253ITR1(AP)), issued by the Board. The relevant part of the circular reads thus (page 16):

'While this rule shall come into force with effect from the 1st day of April, 2001, it has been provided that the employee may, at his option, compute the value of perquisites made available to him or any member of his household for the period beginning on 1st day of April, 2001, and ending on 30th day of September, 2001, in accordance with the rules, as they stood prior to this amendment. It may, therefore, be desirable for the employer to obtain a declaration from each employee as to the option he wants to follow for purposes of tax deduction at source. However, it should be noted that the option to the taxpayer of using the old or new rules for the period specified above shall be applied uniformly in respect of all perquisites, in case of a particular taxpayer. In other words, one cannot

selectively value a particular perquisite by the old rule and another one by the new rule. It is pertinent to mention that benefits specifically exempt under Sections 10(13A), 10(5), 10(14), 17, etc., would continue to be exempt. These include benefits like travel on tour and transfer ; leave travel, daily allowance to meet tour expenses as prescribed, medical facilities subject to conditions. However, administrative circulars and instructions relating to perquisites falling under the purview of rule 3 issued before the adoption of the new rules, shall stand superseded or modified, as the case may be.'

15. The aforesaid clearly, therefore, takes care of the apprehension of the petitioners because the option has clearly been given to the assessee to compute the value of perquisites at his option for the period beginning April 1, 2001, and ending September 30, 2001, in accordance with the rules as these stood prior to the impugned amendment. Since the impugned rule, therefore, does not suffer from the vice of retrospective application as has now been clarified by the Board, we need not pronounce on the challenge to the impugned rule on the ground of retrospective application and the same tending to prejudicially affect the rights of the assessees.

16. Based on the aforesaid discussion, therefore, we find no merit in the petitions. The petitions, accordingly, are dismissed, but without any orders as to costs.