

S. Sthanukumaran Thampi Vs. Central Board of Direct Taxes

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Court : Kerala

Decided On : Jan-21-2009

Reported in : [2009]180TAXMAN350(Ker)

Judge : K.M. Joseph, J.

Acts : [Income Tax Act, 1961](#) - Sections 17(2); [Finance Act, 2007](#); Income Tax Rules, 1962 - Rule 3 and 3(1)

Appeal No. : WP(C) Nos. 3894 and 11807 of 2008(E)

Appellant : S. Sthanukumaran Thampi

Respondent : Central Board of Direct Taxes

Advocate for Def. : Mathew K. Philip,; P.K.R. Menon,; Jose Joseph,;

Advocate for Pet/Ap. : K.P. Pradeep (Payyannur), Adv.

Disposition : Petition dismissed against assessee

Judgement :

K.M. Joseph, J.

1. In these writ petitions, what is under challenge is a clarification issued by the Central Board of Direct Taxes. The claim of the petitioners is that they are Central Government employees working on deemed deputation to BSNL. The question

relates to the interpretation of Rule 3(1) of the Income-tax Rules, 1962. The provisions which are relevant are contained in Table I in relation of the value of residential accommodation provided in the Table. For the year effective up to 31-3-2005, the Table read as follows:

Sl.	Circumstances	Where the	Where the
-----	---------------	-----------	-----------

No.	accommodation is	accommodation
-----	------------------	---------------

unfurnished	is	furnished
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(1)	(2)	(3)	(4)
-----	-----	-----	-----

(1)	Where the accommodation	License fee	The value of
-----	-------------------------	-------------	--------------

	is provided by Union or determined by	perquisite as	
--	---------------------------------------	---------------	--

	State Government to Union or State	determined	
--	------------------------------------	------------	--

	their employees either Government in	under col. (3) and	
--	--------------------------------------	--------------------	--

	holding office or post	respect of increased by	
--	------------------------	-------------------------	--

	in connection with the accommodation	in 10% per annum	
--	--------------------------------------	------------------	--

	affairs of Union or accordance with	the of the cost of	
--	-------------------------------------	--------------------	--

	State or serving with rules framed	by furniture	
--	------------------------------------	--------------	--

	anybody or undertaking that Government	as (including	
--	--	---------------	--

	under the control of reduced by the	rent television sets,	
--	-------------------------------------	-----------------------	--

	such Government on actually paid	by the radio sets,	
--	----------------------------------	--------------------	--

deputation employee. refrigerators, other

household appliances,

air conditioning plant or

equipment) or if such

furniture is hired from

a third party, 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.

(2) Where the accommodation (i) 10% of salary The value of

is provided by any other in cities having perquisite as

employer and population determined

(a) where the exceeding 4 lakhs as under col. (3) and

accommodation is owned per 1991 census; increased by

by the employer; or (ii) 7.5% of salary 10% per annum

(b) where the in other cities, in of the cost of

accommodation is taken respect of the furniture

on lease or rent by the period during (including

employer. which the said television sets,

accommodation radio sets,

was occupied by refrigerators,

the employee other household

during the previous appliances, air

year as reduced by conditioning

the rent, if any, plant or

actually paid by the equipment or

employee. other similar

Actual amount of appliances or

lease rental paid or gadgets) or if

payable by the such furniture is

employer or 10% hired from a

of salary whichever third party, by

is lower as reduced the actual hire

by the rent, if any, charges payable

actually paid by the for the same as

employee. reduced by any charges

paid or payable for the

same by the employee

during the previous

year.

2. The Rule as it stands now also essentially runs on similar lines in regard to the classification. According to the petitioners, they are Central Government employees working on deemed deputation to BSNL. BSNL is an undertaking under the control of the Government. Therefore, it must be treated as they are under the first category, namely, it must be treated as a case where the accommodation is provided by the Central Government. In the writ petitions, they have also stated in Ground C as follows:

C. Petitioners being the employees of Central Government on deemed deputation to the 2nd respondent, under the administrative control of DoT and being provided with housing accommodation owned by the 3rd respondent DoT, falls under serial No. 1 of the Table provided for valuation of perquisites in Rule 3 of the Rules. The clarification given by the 1st respondent in Ext. P1 to the contrary is fallacious and illegal. Petitioners are/were paying rent as fixed by the Government on the housing accommodation.

3. A counter-affidavit is filed on behalf of respondents 2 and 3. In the counter-affidavit, it is stated as follows:

5. BSNL became a company with effect from 1-10-2000 which is fully owned by the Government of India. All the assets and liabilities of DoT has been transferred to BSNL vide OM. No. 2-30/2000 Restg., dated 30-9-2000. But the conveyance of deeds to BSNL are only under progress and yet to be completed. But BSNL is the custodian of all the assets of erstwhile DoT including the quarters and BSNL is allotting these quarters to all its staff irrespective of the fact whether they are BSNL absorbed staff or staff on deemed deputation.

6. As consequence of change of category of the employees after the BSNL became a company, the amendment made in relation to Section 17(2)(ii) of the Income-tax Act in Finance Act of 2007 has operated retrospectively. The concession in the matter of rent of accommodation provided by the employer to the employees is deemed to have been provided by the employer himself and the same is chargeable to tax in the hands of the employees. Therefore, the petitioners cannot take a contention that the accommodation given to them cannot be subjected to Income-tax. Income-tax is chargeable because the BSNL is giving them the accommodation.

4. I heard learned Counsel for the petitioners, learned Counsel appearing for BSNL besides learned Counsel appearing for the Income-tax department. Learned Counsel for the petitioners would point out that insofar as the petitioners are Central Government employees and they are on deemed deputation to BSNL, the accommodation which is provided to them must be treated as accommodation provided under Clause 1. It is also pointed out that the ownership is not transferred from the Central Government to the BSNL.

5. Learned Counsel for the petitioners also relies on the information downloaded from the website of the Income-tax department. Reliance is placed on Ext. P5 in WPC. No. 3894/08.

Under the old Rule 3 for purpose of valuation of the perquisite of unfurnished accommodation all employees are divided into three categories: Central and State Government Employees, Employees of Public Sector undertaking and Semi-Government organisation and others, i.e., private sector employees. Under the new Rule 3, for purposes of valuation of perquisite of accommodation, employees are divided into just two categories instead of (i) Government and State Government employees; (ii) Others.

Example - 1. Mrs. Kumar is a Central Government employee on deputation with a Public Sector Undertaking. She is provided with rent-free furnished accommodation. Her salary as per Rule 3 - Rs. 10,000 per month, licence fee for accommodation is Rs. 300 per month, licence fee paid by her is Rs. 300 per month. Furniture provide costs Rs. 20,000. She is also provided with an Air

conditioner hired at the rate of Rs. 200 per month. What would be the value of perquisites of furnished accommodation:

Licence fee as per Govt. rules Rs. 300 X 12 = 3600 Less Rent paid Rs. 300 X 12 = 3600-----Value of perquisite Nil NilAdd. 10% cost of furniture of Rs. 20,000 Rs. 2,000 2,000Hire charge of A/c Rs. 200 X 12 = 2,400----- -----Total value of perquisite 4,400 per annumFor all other, i.e., those salaried taxpayers not in employment of the Central Government and the State Government, the valuation of perquisite in respect of accommodation would be at prescribed rates. Employees of public sector units who are not on deputation from Central or State Governments would also fall in this category. The rate is 10 per cent of 'salary' in cities having population exceeding four lakhs as per the 1991 census. For other places, i.e., those with population up to 4 lakhs the perquisite value 7.5 per cent of salary.

Example - 2. Mr. Sundaram is an employee in a multinational bank. He is provided with rent-free furnished accommodation. His basic pay is Rs. 15,000 per month.

6. Therefore, it is contended that the clarification found as in paragraphs 3 and 4 of Ext. P1 which are extracted hereunder is bad in law.

3. As regards query in paragraph 4(4)(a) of your letter referred to above, it is to clarify that when a Government employee works with a PSU on deemed deputation or deputation, his employer would be the PSU.

4. Coming to the situation mentioned in paragraph 4(4)(b)(i) of your letter, it is to clarify that when such an employee resides in an accommodation provided by the PSU, the perquisite value in his case would be similar to what is applicable to employees of all employees other than the Central Government and the State Government.

7. Having heard both parties, I am of the view that there is no merit in the contention of the petitioners. The petitioners are Central Government employees on deputation to BSNL. BSNL may be a public sector company coming under the Government of India. It is also pointed out that it is owned by the Government of

India. But, the issue that arises is the interpretation of the Rule as pointed out by the learned Counsel for the respondents and the question to be posed and answered is who provides the accommodation. Going by the pleadings, it would appear to be clear that the accommodation, as far as the petitioners are concerned, is provided not by the Central Government but by BSNL. In fact, going by the terms of the Rule, it may not even be strictly necessary to pose the question as to who owns the building. What is relevant is who provides the accommodation. For instance, even if a person is not the owner of the building, it may be open to him to take a building on lease or any other arrangement from the owner and to provide accommodation to his employees. In such a case also, it cannot be said that the employer has not provided the accommodation. Therefore, what is really relevant is who provides accommodation. In this case, going by the pleadings, in my view, it is clear that the accommodation is provided by the BSNL. The petitioners are at present working as employees of the BSNL. The clarification which is impugned in Ext.P1 also proceeds on the same lines.

Having regard to the terms of paragraph 4 of Ext. P1, I would think that the view taken by the Central Board of Direct Taxes is in keeping with the correct position obtaining in law and I see no reason to take a different view. There is no merit in the writ petitions and hence they are dismissed.