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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.3516 OF 2010

The Commissioner of Income Tax-26 .. Appellant

Vs.

Shankar Krishnan .. Respondent

Mr.Suresh Kumar for the appellant

**CORAM: J.P. DEVADHAR &
K.K. TATED, JJ.**

DATE: 6th SEPTEMBER, 2011

PC:

1. Where an employer takes residential premises on rent by giving security deposit for the benefit of employees, whether the notional interest on such security deposit is liable to be included in the perquisite value of the accommodation given to the assessee employee is the question raised in this appeal?
2. The Assessment Year involved here in A.Y.2001-2002.
3. The Assessee is a salaried employee with McKinley & Company Inc., India. The Assessee was provided with rent free accommodation in Cuffe Parade, Mumbai by his employer company. The monthly rent paid by the employer in respect of the said flat was Rs.10,000/-

p.m. The employer had given an interest free refundable security deposit of Rs.30 lacs to the landlord for renting out the said premises.

4. In the Assessment Year in question, the Assessee computed the perquisite value of the accommodation at Rs.1,20,000 calculated (@Rs.10,000/- pm.) being the rent paid by the employer to the landlord. The Assessing Officer was of the opinion that since the employer had given interest free deposits of Rs.30 lacs to the landlord, interest @ 12% on the said deposit is required to be taken into consideration for estimating a fair rental value of the flat given to the Assessee and accordingly, the Assessing Officer enhanced the perquisite value of the residential accommodation provided to the Assessee.

5. On appeal filed by the Assessee, the CIT(A) upheld the decision of the assessing officer. On further appeal filed by the assessee, the ITAT held that under Rule 3 of the IT Rules, 1962 as amended with retrospective effect from 1.4.2001, the value of perquisites for the residential accommodation provided by the employer shall be the actual amount of lease rent paid or payable by the employer or 10% of the salary whichever is lower, as reduced by the rent, if any, actually paid by the employee. The Tribunal held that under the amended rules, there is no concept of determination of the fair rental

value for the purpose of ascertaining the perquisite value of the rent free residential accommodation provided to the employees.

6. In the present case, the yearly rent paid by the employer was Rs.1,20,000/- whereas 10% salary of the employee came to Rs. 14,01,878/- as such, the rent paid by the employer being less than 10% of the salary of the employee, the perquisite value of the accommodation was liable to be computed at Rs.1,20,000/-. Accordingly, the ITAT held that as per the amended Rule 3, the perquisite value of the accommodation given by the assessee is liable to be accepted. Challenging the above said order, the revenue has filed the present appeal.

7. Mr.Suresh Kumar, learned counsel appearing for the revenue submitted that since the employer has paid a sum of Rs.30.0 lacs for obtaining the residential premises, notional interest payable on the said deposit has to be taken into consideration while including the perquisite value of the premises given by the employer to the assessee.

8. Rule 3 of the Income Tax Rules, 1962 as amended by the Income Tax (Twenty-second Amendment) Rules, 2001 to the extent relevant 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:”

Sl. No.	Circumstances	Where the accommodation is unfurnished	Where the accommodation is furnished
(1)	(2)	(3)	(4)
(1)
(2)	Where the accommodation is provided by any other employer and (a) (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% of salary whichever is lower as reduced by the rent, if any, actually, paid by the employee.
(3)

9. Thus, on a plain reading of Rule 3, it is seen that the perquisite value of the residential accommodation provided by the employer is to be computed on actual amount of lease rental paid or payable by the employer and not on notional basis. Therefore, in our opinion,

the contention of the revenue that the notional interest on the deposits paid by the employer to the landlord has to be taken into consideration while computing the perquisite value of the residential accommodation cannot be accepted in view of the express words used in Rule 3 of the Income Tax Rules, 1962 as amended w.e.f. 1.4.01.

10. In the present case, admittedly, the actual amount of lease rent paid by the employer is less than 10% of the salary of the Assessee and therefore, the decision of the ITAT in holding that the actual amount of lease rent paid by the employer should be taken into consideration while computing the perquisite value of the residential accommodation cannot be faulted.

11. In the result, we see no merits in the appeal.

12. Appeal is accordingly dismissed.

(K.K.TATED,J.)

(J.P.DEVADHAR, J.)