

Fit for publication in ITD

Sd./- JM Sd./- AM

IN THE INCOME TAX APPELLATE TRIBUNAL,

“ D ” BENCH, AHMEDABAD

Before Shri A. K. GARODIA, ACCOUNTANT MEMBER

and Shri KUL BHARAT, JUDICIAL MEMBER

I.T.A. No. 437/ Ahd/2010

(Assessment year 2006-07)

DCIT, Circle 8,
Baroda

Vs. Kuldeep D Kaura,
106, Shrirang App.,
Near Kuber Bhavan Khoti,
Baroda

PAN/GIR No. : AFVPK8712R

(APPELLANT)

..

(RESPONDENT)

Appellant by:

Shri B L Yadav, Sr. DR

Respondent by:

Shri Jitendra S Gandhi, AR

Date of hearing: 23.05.2012

Date of pronouncement: 15. 06.2012

ORDER

PER SHRI A. K. GARODIA, AM:-

This is the Revenue's appeal directed against the order of Ld. CIT(A)-VI, Baroda dated 13.11.2009 for the assessment year 2006-07.

2. The grounds raised by the revenue are as under:

“On the facts and in the circumstances of the case and in law, the learned C.I.T(A) erred:-

(1) in directing the assessing officer to allow the claim of the assessee for exemption of HRA u/s. 10(13A) of the Act without appreciating that the assessee has not paid the rent directly to the landlord and hence the claim of the assessee is not covered under section 10(13A) of the Act.

(2) in the facts and in the circumstances of the case and in law, the learned CIT(A) ought to have upheld the order of the A.O.

(3) It is, therefore, prayed that the order of the Id. CIT(A) may be set-aside and the order of the A.O may be restored.”

3. Brief facts of the case till the assessment stage of this issue are noted by Ld. CIT(A) in para 4.1 of his order which is reproduced below:

“During the assessment proceedings the appellant that he was an employee of Sterlite Industries (India) Ltd., Mumbai, and was paid H.R.A. for his leased accommodation. The employer had obtained residential flat at ground floor, No.3, Ruja Park, Juhu, Mumbai - 400 003, on leave and license basis vide Agreement dated 29-03-2004 with the landlord of flat Mr. Ramesh Khanna, The employer provided this fiat to the appellant for the appellant's residential accommodation and recovered from the appellant's salary the lease rent of Rs. 1,70,000/- on monthly basis which in turn employer paid to the landlord. The assessee claimed exemption for H.R.A. of Rs. 16,19, 940/- u/s. 10(13A) of the IT. Act, 1961 read with Rule 2A of the I.T. Rules. The Assessing Officer was of the view that the exemption claimed of Rs.16,19,940/- in respect H.R.A. received does not qualify for exemption U/s. 10(13A) of the Act as the appellant was allowed to occupy the leased accommodation provided by the employer for which the appellant was not paying any rent to the landlord directly.”

4. Being aggrieved, the assessee carried the matter in appeal before Ld. CIT(A) who deleted this disallowance made by the A.O. and now, the revenue is in appeal before us.

5. Ld. D.R. of the revenue supported the assessment order whereas, Ld. A.R. of the assessee supported the order of Ld. CIT(A). In the course of hearing before us, a query was raised by the bench regarding the benefit derived by the assessee from the employer in respect of accommodation and the Ld. A.R. was asked to submit the employment letter. He submitted photocopy of the employment letter dated 04.02.2004 which was rectified vide letter dated 06.12.2005 w.e.f. 01.04.2005. It was pointed out that as per the original employment letter dated 04.02.2004, he was supposed to get HRA @ 40% of the basic pay and in addition to this, he was to be provided residential accommodation at Udaipur for which he was to be charged @ Rs.6,000/- per month as rent and in case of relocation to Mumbai, he was eligible for a company

leased accommodation for which the total cost of deposit for the house (calculated @ 10% and the monthly rent was fixed up to Rs.1.5 lacs / month). As per the revised employment terms, w.e.f. 01.04.2005, he was to be given HRA @ 40% of the basic and in addition to this, he was allowed special HRA of Rs.1.70 lacs per month and the employer company was to give security deposit of Rs.40 lacs to the land lord. Pay slip for the month of March 2006 was submitted by the Ld. A.R. as per which, he was paid HRA of Rs.3,10,020/- for this month and recovery was made on account of rent @ 1.70 lacs per month. It was pointed out by the bench that under these facts, assessee is getting double benefit i.e. free use of accommodation provided by the employer which was taken by the employer on lease and in addition to this the assessee is also getting HRA and against these two benefits, assessee is making payment of one rent of Rs.1.70 lacs per month to the employer. It was pointed out by the bench that the assessee is getting two benefits out of which, one has to be taxed in any case because only one payment is being made by the assessee on account of rent. As the accommodation provided by the employer company was not added to the income of the assessee being the perquisite value of the house since the assessee has made the reimbursement of rent expenses incurred by the employer but then the same payment of rent to the employer company cannot be considered for the purpose of working out exemption against HRA u/s 10(13A) of the Income tax Act, 1961. The Ld. A.R. could not make any submission in this regard and he simply placed reliance on the judgement of Hon'ble Apex Court rendered in the case of Arun Kumar and Others Vs Union of India as reported in 286 ITR 89 (S.C.).

6. We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below. We find that in the present case, employer is making two payments of Rs.1.70 lacs per month in addition to the payment of HRA to the assessee to the extent

@ 40% of the basic pay. First payment is made by the employer company to the land lord from whom the accommodation was taken on lease by the employer company for the residence of the present assessee. In addition to this, the employer is making payment of special HRA to the assessee of Rs.1.70 lacs per month in addition to the payment of HRA being paid by the employer to the assessee @ 40% of the basic pay. In addition to this, the employer company has provided deposit to the land lord of Rs.40 lacs in respect of housing accommodation taken on lease by the employer company for the purpose of residence of the present assessee. The assessee employee is making payment of Rs.1.70 lacs per month to the employer company towards reimbursement of rental expenses being incurred by the employer company and under these facts, no addition was made by the A.O. in the assessment order and by the assessee in the computation of income in respect of free or concessional housing accommodation provided by the employer u/s 17(2), because the rental expense incurred by the employer company has been reimbursed by the assessee to the employer company. Although in addition to rental expense incurred by the employer company, employer company has provided interest free deposits of Rs.40 lacs to the land lord for the purpose of taking on lease the housing accommodation for the purpose of residence of the present assessee, but no addition was made by the A.O. in respect of interest free deposit provided by the employer company to the land lord. There is no dispute on this aspect.

7. The dispute in the present case is that the assessee claimed exemption of HRA received by him from the employer company of Rs.3 lacs per month approximately. The exemption is claimed by the assessee u/s 10(13A) for the amount of reimbursement of rental expenses paid to the employer of Rs.1.70 lacs per month. The assessee claimed that he is eligible for exemption u/s 10(13A) and he claimed exemption of Rs.16,19,940/-. This claim of the assessee was rejected by the A.O. on

this basis that since the assessee is not paying rent to the land lord directly, he is not entitled to the benefit of Section 10(13A) of the Income tax Act, 1961. One more reason was given by the A.O. that since the assessee was allowed to occupy free accommodation provided by the employer for which the employer was paying rent as per the leased license agreement, the assessee's claim of exemption u/s 10(13A) for a sum of Rs.16,19,940/- is denied and added to the total income of the assessee. Against this disallowance made by the A.O., this is the claim of the assessee that since the assessee is not occupying any housing accommodation owned by the assessee and the assessee is paying rent of Rs.1.70 lacs per month although not to the land lord directly but by way of reimbursement to the employer, the assessee is eligible for exemption u/s 10(13A) of the Act because such reimbursement of rent to the employer also amount to payment of rent by the assessee. Ld. CIT(A) decided this issue in favour of the assessee as per para 4.3 of his order which is reproduced below for the sake of ready reference:

“4.3 I have considered the submissions of the Id. AR and facts of the case and also seen the assessment order. Here, it is a case — where rent was paid by the employer-to-the-landlord and the same was recovered from the employee. The rental agreement between the landlord and the employer is for the purpose of safeguarding the interests of the landlord. In big cities getting proper residential accommodation is very difficult when the employee approaches the landlord, hence this is the way how accommodation is procured and there is nothing new about it. The AO's view that since employer is paying rent, even though the same is recovered from the employee, the employee is not entitled for exemption u/s 10(13A) of the Act in respect of HRA is ill founded. Prima facie, it appears from the facts that the appellant is eligible to claim exemption u/s 10(13A) of the Act in respect of HRA and as such the Assessing Officer was not justified in making addition and rejecting the claim of the appellant for exemption of HRA u/s. 10(13A) of the Act. Thus, in the given facts and circumstances, the AO is directed to allow the claim of the appellant and as such this ground of appeal is allowed.”

8. From the above para of the order of Ld. CIT(A), we find that he has proceeded to decide this issue on this basis alone that since the rental agreement between the land lord and the employer is for the purpose of interest of land lord and the rent is being reimbursed by the assessee employee to the employer, the assessee is eligible for exemption u/s 10(13A) of the Income tax Act, 1961. But he has not considered the 2nd objection of the A.O. that the assessee was allowed to occupy the leased accommodation provided by the employer for which the employer paid rent as per lease & license agreement and this was also one of the reasons given by the A.O. for disallowing the claim of the assessee u/s 10(13A) of the Act. We find that in the facts of the present case, the assessee is getting twin benefit from the employer, one of which is not taxed on the basis of reimbursement of rent by the assessee to the employer. The first benefit is of rent free accommodation provided by the employer to the assessee employee for which the employer is incurring rental expenditure of Rs.1.70 lacs per month in addition to providing interest free deposit of Rs.40 lacs with the land lord. The 2nd benefit being received by the assessee is this that he is getting HRA of Rs.3 lacs approximately per month including special HRA of Rs.1.70 lacs per month. Against these two benefits being received by the assessee, the assessee is making one payment i.e. reimbursement of rentals to the employer company @ Rs.1.70 lacs per month. Now, this reimbursement of rent to the employer company of Rs.1.70 lacs per month is considered against the free housing accommodation provided by the employer company to the employee assessee, then this reimbursement of house rent to employer is no more available to be considered for exemption u/s 10(13A). As per Rule 3, the perquisite value of the housing accommodation provided by the employer company has to be worked out @ 15% of the salary or actual amount of lease rental paid by the employer whichever is lower as reduced by the rent if any actually paid by the employee. In the present case, 15% of the

salary will be more than the actual rent being paid by the employee i.e. Rs.1.70 lacs per month and the same amount has been reimbursed by the employee to the employer and, therefore, perquisite value of housing accommodation provided by the employer company to the employee assessee is 'nil' as per Rule 3 of the Income Tax Rules. But once, the housing perquisite value is worked out as 'nil' after considering this rental payment of Rs.1.70 lacs per month to the employer company, there is no rental payment made by the assessee employee for the purpose of working out exemption of HRA u/s 10(13A) of the Act and, therefore, we are of the considered opinion that the disallowance made by the A.O. regarding the claim of the assessee for exemption u/s 10(13A) is in order and, therefore, the order of Ld. CIT(A) resulting in deletion of disallowance is not sustainable. We, therefore, reverse the order of Ld. CIT(A) on this issue and restore that of the A.O.

9. Now, we consider the applicability of the judgement of Hon'ble Apex Court cited by Ld. A.R. being the judgment of Hon'ble Apex Court rendered in the case of Arun Kumar and others (supra). In that case, the dispute was regarding perquisite value of housing accommodation provided by the employer. In the present case, there is no dispute on this aspect and we have seen that the same was not taxable as per Rule 3 of the Income tax Rules 1962 and neither the assessee has declared any perquisite value of the housing accommodation provided by the employer nor any addition was made by the A.O. on this account and hence, this judgement is not applicable in the present case. In the present case, the dispute is regarding allowability of exemption u/s 10(13A) against receipt of HRA by the assessee employee which was never the dispute before the Hon'ble Apex Court in the case cited by the Ld. A.R.

10. In the result, the appeal of the revenue stands allowed.

11. Order pronounced in the open court on the date mentioned hereinabove.

Sd./-

(KUL BHARAT)
JUDICIAL MEMBER

Sp

Copy of the Order forwarded to:

1. The applicant
2. The Respondent
3. The CIT Concerned
4. The Ld. CIT (Appeals)
5. The DR, Ahmedabad
6. The Guard File

Sd./-

(A. K. GARODIA)
ACCOUNTANT MEMBER

By order

AR,ITAT,Ahmedabad

1. Date of dictation.....5/6
2. Date on which the typed draft is placed before the Dictating Member...6/6....Other Member
3. Date on which the approved draft comes to the Sr. P.S./P.S.7/6
4. Date on which the fair order is placed before the Dictating Member for pronouncement15/6
5. Date on which the fair order comes back to the Sr. P.S./P.S.15/6
6. Date on which the file goes to the Bench Clerk15/6/12
7. Date on which the file goes to the Head Clerk
8. The date on which the file goes to the Assistant Registrar for signature on the order
9. Date of Despatch of the order.