

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos. 442 to 444/Bang/2023
Assessment Years : 2011-12 to 2013-14

M/s. Employees Provident Fund Organisation, 37/1, Annapoorneshwari Complex, 6 th Main, Singasandra, Bangalore – 560 068. TIN: BLRE03625G	Vs.	The Deputy Commissioner of Income Tax, TDS, Circle – 1(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. B V Vidyulatha & Ms. Akshaya, Advocates
Revenue by	:	Shri Veera Raghavan, JCIT DR

Date of Hearing	:	27-07-2023
Date of Pronouncement	:	09-08-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of separate orders all dated 21.03.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi for A.Ys. 2011-12 to 2013-14.

2. It is submitted that, the issues raised by the assessee in all the three appeals are common and on identical facts. It is submitted that the observations of the Ld.CIT(A) as well as the Ld.AO are

identical and similar for all the years under consideration. Accordingly, all the appeals are being disposed of by way of common order. For the sake of convenience, grounds raised by the assessee for A.Y. 2011-12 are reproduced as under:

"1. The Learned CIT (A) has not considered any of the submissions made by the Appellant in support of its case that, the residential accommodation provided by it to its employees must be treated at par with Central Government for the purpose of deduction of TDS on value of perquisites of rent free accommodation.

2. Section 17(2) of Income Tax Act reads, "Perquisite includes the value of rent free accommodation provided to the assessee by his employer". EPFO does not provide any rent free accommodation. License fee in respect of accommodation allotted to them by the Board is deducted at the rates prescribed by Govt. of India. Therefore, Staff Quarter cannot be termed as Rent Free Accommodation. Staff quarters are given in lieu of "House rent allowance" i.e. part of basic wages or salaries and therefore it is not an excess benefit or advantage to be qualified as perquisites U/s 17(2) of IT Act.

3. The Central Board of Trustees, EPFO is governed, controlled and administered by Central Government. Union Minister of Labour and Employment is the Chairman of the Organisation and the Secretary of Ministry of Labour and Employment is the Secretary of the Organisation.

4. EPFO is the extension of the executive power of the Union of India for implementing the mandate envisaged under Article 41 of the Constitution and is brought into existence under the EPF & MP, Act 1952. Therefore, as per Articles 258(1) of Constitution read with 8(b)(1) of the General Clauses Act, 1897, Central Board of Trustees, EPFO is the executive organ of the Central Government.

5. Section 18 - A, 20 and 20 of EPF and MP Act, 1952 makes it a mandate to the Central Board of Trustees to comply with any directions given by the Central Government as it may think fit for the efficient administration of the Act.

6. Section 21 of the EPF and MP Act, 1952, the Central Government has powers to make rules to carry out the provisions of the EPF and MP Act, 1952.

7. Section 18A of the Act which reads as "Authorities and Inspector to be Public Servant", which clearly implies that the Employees of Central Board of Trustee are the Government Employees and Public Servants.

8. CBT has been constituted by enactment of EPF& MP Act, 1952 with due approval of President of India. This implies that the Department and Wings can be created by the Act of Parliament and CBT exercises the delegated powers provided by president of India, while considered in consonance with the Section 3(8)(b) of the General Clauses Act, 1897, and hence earns its eligibility to be identified as Government.

9. The autonomy as per Para 50 of EPF Scheme 1952, enjoyed by the Organisation is merely a delegation of powers in accordance with the Section-19 of the EPF & MP Act, 1952 by which there is no discretion with the EPFO in the matter of finance and administration of the employees of CBT.

10. The guiding principles contained in the order of ITAT, Bangalore Bench-A, in ITA No. 1607, 1711/Bang/2013 in the case of Central Food Technology Research Institute, without noting that, the facts of the said case cannot be made applicable to the case on hand, in view of admitted fact that, Central Food Technology Research Institute, cannot be compared with the Appellant EPFO, which regulates the Directive Principles of State Policy as envisaged in Article 41 of the Constitution of India.

11. Apart from Police like organisations and Income Tax Department only EPFO executes its power to curtail the Right to Liberty by issuing the Orders under Section 7A, 8B, 8F and 8G of EPF & MP Act, 1952, to enforce Summons, Attachment and Imprisonment and these powers are legitimate powers of Government only.

12. Though the salaries of the Appellant EPFO are not drawn out of the consolidated funds of India but paid out of the funds of the Appellant EPFO it is regulated by the Central Government as provided under Section 5D(C), 5D (9) (a) of EPF and MP Act, 1952 and also that the funds of the Appellant EPFO are vested in and administered by the

Central Board of Trustees, which is a tripartite body consisting of representatives from Central and State Governments, the Employers and Employees. Hon'ble Minister of Labour and Employment, Government of India is the Chairman of the Central Board of Trustees.

13. In the Orders of the Commissioner of Income Tax (Appeals), Chandigarh vide No.43/09-10 and 44/09-10, the employees of Central Board of Trustees, EPFO stands to be in the category of Central Government Employee.

14. The Learned CIT (A) has not considered the essence of the following decisions of the Hon'ble Apex Court:

- Rajasthan State Electricity Board Vs. Mohan Lal ((1967) 3 SCR 377),*
- Sukhdev Singh & Ors Vs. Bhagath Ram Singh Raghuvanshi & Anr (1975) 1 SCC 421)*
- Union of India Vs. R.C. Jain & Ors(1981) 2 SCC 308)*

15. The Learned CIT (A) has erred in completely accepting the findings of the AO enumerated in his Order passed under Section 201(1) and 201(1A) of the Income Tax Act, without paying proper attention to the reply statement made by the Appellant EPFO and thus has erroneously held that:

- though the ownership control and management of State Corporation is vested in the Union or State, yet in the eye of law, the Corporation is its own master and is a separate entity as its employees do not hold any civil posts under the Union or State.*
- the funds of the Appellant EPFO, are not deposited into the consolidated fund of India and the salaries of its employees are not drawn out of consolidated funds of India and hence, it cannot be treated as Central or State Government.*
- in paragraph 11 of the Order passed under section 201(1) and 201(1A) of the IT Act that, the AO has held that the Appellant EPFO is following the standard procedure for deductors other than the Government deductors.*

16. License fee in respect of accommodation allotted to them by the Board is deducted at the rates prescribed by Govt. of India. The employees of the Central Board of Trustees, EPFO have not been provided rent free accommodation and are paying License Fee as per Rules of Govt. of India and are not drawing HRA. Therefore, Staff Quarter cannot be termed as Rent Free Accommodation. Staff quarters are given in leu of "House rent allowance"

i.e. part of basic wages or salaries and therefore it is not an excess benefit or advantage to be qualified as perquisites U/s 17(2) of IT Act.

17. In view of the above, it is again highlighted that there is no default on the part of administration in the matter of TDS in the context of Service conditions, allowances, staff quarters etc of Employees of Central Board of Trustees, EPFO because all such rules and procedure have been approved by the Central Government itself. Hence there is no violation 'of any IT rules in the matter of providing staff quarters to the employees of Central Board of Trustees.

18. The Appellant craves leave of this Hon'ble Tribunal to add, alter, amend or vary and/or withdraw any of the aforesaid grounds of Appeal at the time of hearing of the above Appeal.

19. In view of the submissions made above, the Appellant prays that this Hon'ble Tribunal be please to allow the Appeal and grant all the reliefs that the Appellant is entitled to.”

3. Brief facts of the case are as under:

3.1 The assessee is an autonomous body and is a creation under the statute, “Employees Provident Fund Organisation and Miscellaneous Provisions Act 1952”. It is submitted that assessee was enacted to execute the duty of the state and therefore is an extension of national administrative authority, as provided as per the mandate of Article 41 of the Constitution of India. It is submitted that the assessee has been created with defined provisions regarding recruitment, salary, allowances and other service conditions in respect of its executive heads and staff. It is also submitted that, the assessee is governed, controlled and administered by the Central Government under the leadership of Union Minister of Labour & Employment who is the chairman of the organisation and Secretary of Ministry of Labour & Employment. It is thus submitted by the assessee that

as per Article 258(1) of the Constitution of India r.w.s 8b(1) of the General Clauses Act, 1897, the assessee is to be construed as an executive limb of the Central Government.

3.2 The Ld.AO observed that assessee has provided its employees with unfurnished accommodation, and was of the view that assessee was required to deduct TDS on the perquisite value in respect of such accommodation provided to its employees. Accordingly the Ld.AO issued notices calling upon the assessee to explain the reason as to why the TDS was not deducted. In response to notice, the assessee responded vide letter dated 12.01.2018 as under:

“Employees' Provident Fund Organisation came into being following enactment of Employees Provident Fund Act 195. The Funds established under the Act are vested in and administered by Central Board of Trustees is a tripartite body consisting of representatives from Central and State Governments, the Employers and Employees. Hon. Minister of Labour and Empowerment, Govt. Of India is the Chairman of the Central Board of Trustees. The Employees Provident Fund Organisation implements the provisions of the EPT & MP Act, 1952 and the Schemes framed thereunder through its field formations with Central PF Commissioner as the Chief Executive Officer appointed by the Central Government and under section 5D of the Act.

"As per Section 5D 9&a) of EPF & MP Act 1952 Salary and allowance, of the Officers and Employees method of recruitment, discipline etc. Are in accordance with the Rule and Orders applicable to Officers and Employees of Central Government drawing corresponding pay, allowances and deduction of Income Tax, Pensionary benefits are also on par with Central Govt. And no departure from said Rules and Orders in respect of these matters can be made without prior approval of the Central Govt.

In Exercise of powers conferred under Section 8B of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 read with the notification No. S.O.796 vide the Gazette of India Part II, Section 3(ii) dated 2.2,0 March

1997 issued by the Govt. Of India, command to arrest the defaulter and his detention in prison has also been vested to the Officers of this Organisation. Other Central Govt. Rules such as CCS Conduct Rules, FRSR, GFR etc. are also applicable to our Staff and Officers. The Employees are also getting HRA as per Central Govt. Rules and license fee in respect of accommodation allotted to them by the Board is deducted at the rates prescribed by Govt. of India. Our employees have not been provided rent free accommodation and are paying License Fee as per Rules of Govt. of India and are not drawing HRA. Therefore Staff Quarter cannot be termed as Rent Free Accommodation. India has signed many Social Security Agreements with Foreign countries and the responsibility of signing the Certificate of Coverage in India for Social Security Schemes has been entrusted to Employees' Provident Fund Organisation. The role and responsibilities of this Organisation has been accepted by the foreign countries, this means Employees' Provident Fund Organisation has a Sovereign responsibility to certify Indian Nationals travelling abroad for having being covered in Social Security Schemes in India. In view of above, the residential accommodation provided be treated at par with Central Govt. for deduction of TDS on value of perquisites of rent free accommodation.”

3.3 The Ld.AO after considering the submissions of the assessee treated the assessee as “assessee in default” for non-deduction of TDS on perquisite value of unfurnished accommodation provided to its employees, and computed the default along with interest u/s. 201/1(A) of the act, for all the years under consideration.

3.4 The Ld.AO also relied on the decision of *Coordinate Bench of this Tribunal* in case of *M/s. Central Food Technological Research Institute vs. ITO (TDS)* in ITA Nos. 1607 to 1611/Bang/2013 for A.Ys. 2007-08 to 2011-12 by order dated 04.07.2014 to support the view.

3.5 Aggrieved by the orders of the Ld.AO, assessee preferred appeals for all the concerned assessment years before the Ld.CIT(A). The Ld.CIT(A) observed and held as under:

4.3 In the light of above discussion the AO has held that EPFO cannot be treated as Government. Further, AO has also relied on the General Clause Act and has noted that the appellant (EPFO) cannot be held as Central Government. It is also noted by the AO that as per section 50 of EPF Scheme, 1952, all contributions received shall be credited to an account to be called Provident Fund Account. The said account shall be operated by the officers as may be authorised by a Central Board. Further, AO has noted that As per section 54, all expenses of administration of the Fund, including the fees and allowances of the trustees of the Central Board and salaries, leave and joining time allowances, Travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident fund and other benefit fund instituted for the officer and employees of the Central Board, the cost of audit of the accounts, legal expenses and cost of all

stationery and forms incurred in respect of the Central Board, Cost of expenses incurred in connection with the construction of office buildings and staff quarters shall be met from the administration account of the fund. Thus, the corporation enjoys fare amount of financial autonomies. As far as Government accounts are concerned, the Constitution of India has laid down strict provisions for handling the funds of the government, all the money is credited to specified funds and no expenditure can be incurred without the authority of the Parliament or State Legislature. All revenues by ways of taxes and other receipts to the Government in connection with the conduct of Government business are credited into the consolidated fund constituted under Article 266(1) of the Constitution of India. All the expenditure of the Government is incurred from this fund and no amount can be withdrawn from the Fund without authorisation from the Parliament. The funds of the EPFO are not deposited into the consolidated fund of India. The salaries of the employees are also not drawn out of consolidated fund of India. Hence, the AO has held that on this count also, EPFO cannot be treated as a Central or State Government.

4.4 Based on the above observation the AO has held that employee of EPFO do not fall under the category of Central and State Government Employee but are to be classified as 'Other'. Further, AO has brought on record that consequent to amendment, there are only two categories of two assessee's

- (a) *Central & State Government Employees;*
- (b) *Others.*

Hence, the AO has given his findings that consequent to amendment, the appellant falls squarely under '**Others**'. Further, AO has also brought on records that validity of Rule 3 has been upheld by the Supreme Court vide decision in '*Arun Kumar & Others Vs. Union of India (286 ITR 89)*'. Accordingly, the AO has held that Rule-3 of Income Tax Rules and provisions with regard to TDS are clearly applicable to the appellant (EPFO). Hence, it has been held by the AO that, the deductor, M/s EPFO

is considered as an "Assessed in default" as per provision of section 201(1) of the IT Act for not deducting TDS on value of perquisites in the nature of providing residential accommodation. Further, interest under section 201(1A) of the IT Act has been charged by the AO up to the date of order. Accordingly, additions of Rs. 1,68,848/- u/s 201(1) and addition of Rs. 1,43,521/- u/s 201(1A) amounting to total addition of Rs. 3,12,370/- has been made by the AO in his order dated 29.03.2021.

4.5 The appellant has strongly challenged the findings of the AO and has stated that AO has erred in his findings with regard to appellant (EPFO) being treated as "Assessee in default". The appellant has argued that EPFO is the autonomous body created by the Act of Parliament as well as extension of national administrative authority of the republic of India. Further, the appellant has argued that EPFO is a administrative organ to implement the Central Legislation as per the mandate provided which allows it to give the salary and allowances as specified by the Central Government and only departure from that need a prior approval. Therefore, it need not deduct the tax for providing its employees with accommodation. Further, the appellant has argued that EPFO is State duly created with defined provisions regarding recruitment, salary, allowances and other conditions of service in respect of its executive head and Staff. It has been argued that EPFO is governed, controlled and administered by Central Government. Union Minister of Labour and Employment is the Chairmen of the Organisation and the Secretary of Ministry of Labour and employment is the Secretary of the Organisation which work in a relation to the executive power of the Union of India for implementing the mandate envisaged under Article 41 of the Constitution and enacted by EPF & MP, Act 1952. The appellant has also brought on record that EPFO has been constituted by enactment of EPF & MP Act, 1952 with due approval of the President of India, Therefore, EPFO is nothing but Executive Organ of Central Government of India and cannot be treated as any other identity. The appellant has denied the findings of the AO contend in the order u/s 201(1) & 201(1A) of the IT Act and has argued that in the light of narration of facts, Rule positions in under EPF & MP Act, 1952 the General Clauses Act, 1987 and Order of

Commissioner appeals, Chandigarh vide No. 43/09-10 and 44/09-10 the employees of EPFO stands to be in the category of Central Government employees and not in "Others" category.

4.6 After duly considering the findings of the AO in his order u/s 201(1) & 201(1A) and counter arguments of the appellant in his reply I am more inclined to accept the findings of the AO. AO has given his detailed findings as to why appellant falls under the category of "Others". In this regard the guiding principles contained in the order of ITAT, Bangalore Bench-A in ITA No. 1607, 1611/Bang/2013 in the case of Central Food Technology Research Institute may be referred. The principles as enumerated in that order very much state that the ownership, Control and management of the state corporation may be, in fact, vested in the Union or State, yet in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any civil post under the Union or the State. Similarly, it has also been stated clearly that a statutory corporation has a separate and independent existence and is a different entity from the Union or State Government. It is important to note that funds of EPFO (appellant) are not deposited into the consolidated fund of India. The salaries of the employees are also not drawn out of consolidated funds of India. Hence, the appellant cannot be treated as Central or State Government. Further, the AO observation contained in paragraph 16 of his order u/s 201(1) & 201(1A) of the IT Act is important to mention here.

'The EPFO does not follow the procedure laid out for Government deductor. In respect of Government, the deductor is required to deduct the tax at source, report the tax deducted to pay and account officer(PAO). The PAO is required to submit Form 24G to the notified agency, generate Book Identification Number (BIN) for each deductor and intimate the same to the deductor. Then the deductor has to submit quarterly e-TDS return quoting the BIN. The assessee is not following this procedure. Further, Income tax is not being remitted through book adjustment which is done by Govt. deductors. In facts the assessee(appellant) is following the standard procedure for deductors

other than Government deductors.

In view of the above observations, I am inclined to accept the findings of the AO that EPFO (appellant) has rightly been treated as "Assessee in default" as per section 201(1) of the IT Act for not deducting TDS on the value of perquisites in the nature of providing residential accommodation. Accordingly, the addition of Rs. 3,13,370/- made by the AO u/s 201(1) & 201(1A) of the IT Act is confirmed. Therefore, this ground of appeal is dismissed.

6. In result, the appeal of the appellant is hereby dismissed.

Aggrieved by the orders of Ld.CIT(A), assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that the decision relied by the authorities below in case of *Central Food Technological Research Institute vs. ITO (supra)* is distinguishable on facts as it is a Scientific and Industrial Research, registered under the provisions of Societies Registration Act, and falls under the category of "Others" under S.No. 2 of the table below Rule 3 of the Income Tax Rules, 1962 which is valuation of perquisite. This has been observed by the Coordinate Bench in para 7 of the order relied on by the Ld.AO/CIT(A). She submitted that this *Tribunal* in case of *Central Food Technological Research Institute vs. ITO (supra)* further observed in the relevant para that, the salaries of that assesseees are not directly met out of Consolidated Fund of India and they are given certain amount of grant-in-aid by the government. Based on such observations, the Ld.AR submitted that this *Tribunal* held that Central Food Technological Research Institute cannot be held to be a pure Government department for the purposes of Rule 3 of the Income Tax Rules 1962.

4.1 She submitted that in the facts of the case of the assessee before us, the assessee has to be considered as employees of the Central government for the purposes of Rule 6 in view of the following provisions enacted under the “Employees Provident Fund and Miscellaneous Provisions Act, 1952”.

“2 (aa) “authorised officer” means the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;]

5. Employees’ Provident Fund Schemes.—6 [(1)] The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees’ Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the 7 [establishments] or class of 7 [establishments] to which the said Scheme shall apply 8 [and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme].

[5A. Central Board.—(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, a Board of Trustees for the territories to which this Act extends (hereinafter in this Act referred to as the Central Board) consisting of the following 2 [persons as members] namely:—

(a) [a Chairman and a Vice-Chairman] to be appointed by the Central Government;

(aa) the Central Provident Fund Commissioner, ex officio;]

(b) not more than five persons appointed by the Central Government from amongst its officials;

(c) not more than fifteen persons representing Governments of such States as the Central Government may specify in this behalf, appointed by the Central Government;

(d) ten persons representing employers of the establishments to which the Scheme applies, appointed by the Central Government after consultation with such organisations of employers as may be recognised by the Central Government in this behalf; and

(e) ten persons representing employees in the establishments to which the Scheme applies, appointed by

the Central Government after consultation with such organisations of employees as may be recognised by the Central Government in this behalf

[5AA. Executive Committee.—(1) The Central Government may, by notification in the Official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.

5D. Appointment of officers.—(1) The Central Government shall appoint a Central Provident Fund Commissioner who shall be the chief executive officer of the Central Board and shall be subject to the general control and superintendence of that Board.

(2) The Central Government may also appoint 2 [a Financial Adviser and Chief Accounts Officers] to assist the Central Provident Fund Commissioner in the discharge of his duties.

(3).....

(4) No appointment to 4 [the post of the Central Provident Fund Commissioner or an Additional Central Provident Fund Commissioner or a Financial Adviser and Chief Accounts Officer or any other post under the Central Board carrying a scale of pay equivalent to the scale of pay of any Group 'A' or Group 'B' post under the Central Government] shall be made except after consultation with the Union Public Service Commission:

(5) A State Board may, with the approval of the State Government concerned, appoint such staff as it may consider necessary.

(6) The method of recruitment, salary and allowances, discipline and other conditions of service of the Central Provident Fund Commissioner, 6 [and the Financial Adviser and Chief Accounts Officer] shall be such as may be specified by the Central Government and such salary and allowances shall be paid out of the Fund.

(7) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner, Regional Provident Fund Commissioner, Assistant Provident Fund Commissioner and other officers and employees of the Central Board shall be such as may be specified by the Central Board in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Central Board is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of officers and employees under clause (a), the Central Board shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Central Board shall refer the matter to the Central Government whose decision thereon shall be final.]

(8) The method of recruitment, salary and allowances, discipline and other conditions of service of officers and employees of a State Board shall be such as may be specified by that Board, with the approval of the State Government concerned.

6D. Laying of schemes before Parliament.—Every scheme framed under section 5, section 6A and section 6C shall be laid, as soon as may be after it is framed, before each House of Parliament, while it is in session.....

7. Modification of scheme.—(1) The Central Government may, by notification in the Official Gazette, add to 3 [amend or vary, either prospectively or retrospectively, the Scheme, the 4 [Family Pension] Scheme or the Insurance Scheme, as the case may be.....

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament.....

7D. Tribunal.—The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.]

13. Inspectors.—(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act 14[, the Scheme] 15[, the 16[Pension] Scheme or the Insurance Scheme], and may define their jurisdiction.

18A. *Authorities and inspector to be public servant.—The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.]]*

19. *Delegation of powers.—The appropriate Government may direct that any power or authority or jurisdiction exercisable by it under this Act 6 [, the Scheme 7 [, the 2 [Pension] Scheme or the Insurance Scheme]] shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also—*

(a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

20. *Power of Central Government to give directions.—The Central Government may, from time to time, give such directions to the Central Board as it may think fit for the efficient administration of this Act and when any such direction is given, the Central Board shall comply with such direction.*

21. *Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.”*

4.2 Based on the above provisions, the Ld.AR submitted that, the assessee is an organisation consisting of Central Provident Fund Commissioners, Additional Central Provident Fund Commissioners and other officers including Inspector appointed by the Central Government, and therefore cannot be equated to the facts in case of *Central Food Technological Research Institute vs. ITO (supra)*, who is registered under the Societies Registration Act.

4.3 The Ld.AR vehemently submitted that, the assessee is categorised as a state within the meaning of Article 12, as the

employees of the assessee are selected by the State and in such manner that the State can create or abolish the posts or /and regulate the conditions subject to which the post is or will be held by such employees of the assessee. It is thus submitted by the Ld.AR that assessee cannot exist independently without the state.

4.4 She submitted that assessee has been formed also to perform through its employees, the sovereign functions like attachment and sale, arrest and detention and cannot be equated with the employees of the decision relied by the revenue authorities in case of *Central Food Technological Research Institute vs. ITO (supra)*.

4.5 The Ld.AR thus submitted that, the issue of TDS in any event does not arise in the present facts of assessee, as a house rent allowance is collected from its employees to whom unfurnished accommodation is provided. She submitted that assessee does not fall within the mischief of section 17(2)(ii) as the accommodation given to the employees of the assessee are not on concessional basis.

4.6 On this background, the Ld.AR submitted that the assessee was not required to deduct TDS in respect of the perquisite value of unfurnished accommodation provided by the assessee to its employees.

5. On the contrary, the Ld.DR relied on the orders passed by the authorities below.

6. We have perused the submissions advanced by both sides in the light of records placed before us.

6.1 For the sake of convenience, it is necessary to reproduce Rule 3 of the Income Tax Rules, 1962.

“Valuation of perquisites.

3. 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:

TABLE I

Sl. No.	Circumstances	Where accommodation is unfurnished	Where accommodation is furnished
(1)	(2)	(3)	(4)
(1)	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, 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 is provided by any other employer and—		
	(a) where the accommodation is owned by the employer, or	(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census;	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such
		(ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census;	
(iii) 7.5% of salary in other areas, in respect of			

		<i>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.</i>	<i>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.</i>
	<i>(b) where the accommodation is taken on lease or rent by the employer.</i>	<i>Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.</i>	<i>The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household 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.</i>
<i>(3)</i>	<i>Where the accommodation is provided by the employer specified in serial number (1) or (2) in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another).</i>	<i>Not applicable</i>	<i>24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by the rent, if any, actually paid or payable by the employee:</i>

Provided that nothing contained in this sub-rule shall apply to any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site—

<i>(i)</i>	<i>which, being of a temporary nature and having plinth area not exceeding 800 square feet, is located not less than eight kilometres away from the local limits of any municipality or a cantonment board; or</i>
<i>(ii)</i>	<i>which is located in a remote area:</i>

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.

Explanation.—For the purposes of this sub-rule, where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,—

(i)	<i>the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and</i>
(ii)	<i>the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No. (2)(a) of Table I, as if the accommodation is owned by the employer.</i>

6.2 It is the contention of the Ld.AR that assessee falls under S.No. 1 of table 1 of the Rule 3 and therefore no TDS has to be deducted by the assessee on the perquisite value of the unfurnished accommodation provided by assessee to its employees. It is also submitted by the assessee that it is not working as an autonomous body / undertaking under the control of State / Central government / Semi-government organisation and therefore the Circular No. 113/2002 dated 23.12.2002 is not applicable to assessee.

6.3 We have also perused the provisions of “Employees Provident Fund and Miscellaneous Provisions Act, 1952”, which is notified by the central government in the official gazette as per section 5A of the Act. Further as per section 5AA, the Central Government by way of notification in the official gazette constitutes the executive committee to assist the central board in performance of its functions. It is noted that the committee under the central board are the officials from Central and State Government and as per section 21 of the act, the power to make rules are vested with the Central Government in order to carry out the functions as per the provisions of the act.

6.4 It is noted that certain powers conferred under the act as per section 7A, 8B, 8F, 8G can be exercised only by the employees under the Central Government. Under these sections, the officers are authorised to issue recovery certificate in respect of the arrears of PF dues payable. The officers under these provisions are also vested with various rights to ensure recovery of dues including attachment and sale of movable or immovable property, arrest of employer and detention in prison or appointing a receiver to manage such movable or immovable property so attached.

6.5 In our considered opinion, the above powers cannot be equated with the powers that are exercised by the employees of an organisation that are governed by the byelaws under the Societies Registration Act. At this juncture, it may not be out of place to refer to the decision of *Hon'ble Supreme Court* in case of *CHECKMATE SERVICES PVT LTD VS CIT-1 in CIVIL APPEAL 2833/2016 vide its judgment dated 12 October 2022* wherein *Hon'ble Supreme Court* has observed that the contributions that needs to be deposited by an employer of an establishment are statutory payments. Further we note that section 1(3)(b) of the Act empowers the Central Government to apply the Act to all trading / commercial establishments whether such establishments are factories or not.

Based on the above discussion, we do not agree with the view taken by the authorities below that the present assessee is similar with *Central Food Technological Research Institute vs. ITO (supra)*.

6.6 We therefore agree with the submissions of the Ld.AR that present assessee falls under S.No.1 of the table under Rule 3 of the Income Tax Rules, 1962. We are of the view that assessee cannot be held to be an assessee in default for the reason that it is an organisation under a Statute enacted by the legislature. Further that as the assessee collects license fee in the form of House Rent Allowance from its employees against the unfurnished accommodation and therefore, the provisions of TDS will not apply under such circumstances.

Accordingly, the grounds raised by the assessee stands allowed for all the years under consideration.

In the result, all the appeals filed by the assessee stands allowed.

Order pronounced in the open court on 09th August, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th August, 2023.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore