IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T. A. No.1077/Bang/2017
(Assessment Year : 2014-15)

Central Silk Board,
Central Silk Board Complex,
BTM Layout, Hosur Road,
Madiwala, Bangalore-560 068. …. Appellant.

Vs.

Income Tax Officer,
TDS Ward 1(2), HMT Bhavan, Bangalore. ….. Respondent.

Appellant By : Shri Srinivasan, Advocate.
Respondent By : Shri B.R. Ramesh, CIT (D.R)

Date of Hearing : 10.08.2017.
Date of Pronouncement : 23.10.2017.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.31.3.2017 of Commissioner of Income Tax (Appeals)-13, Bangalore arising from the order passed under section 201(1) & 201(1A) of the Act for the Assessment Year 2014-15.

2. The assessee has raised the following grounds :

1. The learned Commissioner (Appeals), on facts and in law, erred in sustaining the order passed by the Assessing Officer under sections 201(1) & 201(1A) treating the appellant as an assessee in default in respect of its alleged non-deduction of tax at source on the perquisite value of unfurnished accommodation provided to its employees and levying interest thereon.

2. The learned Commissioner (Appeals) erred in upholding the findings of the Assessing Officer that the appellant is an autonomous organisation and that it cannot be treated as Government.

3. The learned Commissioner (Appeals) failed to appreciate that the appellant is financially, functionally and administratively controlled by the Ministry of Textiles, Government of India, that it is entirely and exclusively funded by the Government of India, that it is not a registered society or a limited company or an autonomous body and that it does not have Bye-laws for its functioning and activities.

4. The learned Commissioner (Appeals) erred in upholding the finding of the Assessing Officer that it was required to value the unfurnished accommodation provided to its employees in terms of Sl. No. 2 of Table - I of Rule 3 of the Income Tax Rules, 1962 which is applicable to accommodation provided by private employers.

5. The learned Commissioner (Appeals) ought to have appreciated that the appellant constituted ' the State ' within the meaning of Article 12 of the Constitution of India and that the salaries to its employees are paid from the Consolidated Fund of India and accordingly, ought to have held that the employees of the appellant are employees of the Central Government.

6. The learned Commissioner (Appeals) erred in following the decision of the Hon'ble Income Tax Appellate Tribunal - Bangalore Bench in Central Food Technological Research Institute v. ITO in ITA Nos. 1607 to 1611/Bang/2013 which is distinguishable on facts and the ratio of which is not applicable to the case of the appellant.

7. The learned Commissioner (Appeals) ought to have followed the decisions of the Hon'ble Income Tax Appellate Tribunal - Delhi Bench in Ram Kanwar Rana v. ITO 159 ITD 431 & Pune 'B' Bench in Smt. Sapna Sanjay Raisoni v. ITO 179 TTJ (Pune) (UO) 34 relied upon by the appellant and accordingly, ought to have held that the employees of the appellant are employees of the Central Government.

8. The learned Commissioner (Appeals) erred in holding that Ground Nos. 1, 2 & 13 are general in nature and, therefore, do not require to be separately adjudicated.

9. The learned Commissioner (Appeals) erred in not considering and adjudicating upon Ground Nos. 9 to 12 raised by the appellant before her.

10. The learned Commissioner (Appeals) ought to have considered Ground No. 9 and the submissions made in support thereof contained in paragraph 6 at page 4 of the Written Submissions filed before her and accordingly, ought to have held that the appellant could not be treated as an assessee in default in respect of education cess and secondary & higher education cess on income tax.

11. The learned Commissioner (Appeals) ought to have adjudicated upon Ground Nos. 10 & 11 and considered the submissions made in support thereof contained in paragraph 7 at pages 4 & 5 of the Written Submissions filed before her and accordingly, ought to have held that Interest under section 201(1A) could not be levied on the appellant.

12. The appellant having filed the quarterly statements of deduction of tax referred to in section 200(3) in the status of ' Government ' and the order under sections 201(1) & 201(1A) having been passed on the appellant by the Assessing Officer in the status of ' Society/Autonomous Body ', the learned Commissioner (Appeals) ought to have quashed the said order as being bad in law, invalid and ab inito void.

13. The learned Commissioner (Appeals) failed to take note of the Written Submissions filed before her, the various decisions relied upon by the appellant, the various documents filed before her, facts of the case and the weight of evidence on record.

14. The order of the ld. Commissioner (Appeals) is opposed to law and facts of the case."

3. The assessee is a autonomous body constituted under Central Silk Board Act, 1948 primarily for promoting and developing silk industry. The assessee provides scientific and technological assistance for

development of silk industry under Central Government. Thus the assessee is a statutory body functioning directly under the control of Ministry of Textiles, Government of India. The Assessing Officer proceeded to hold the assessee as assessee in default under Section 201(1) and 201(1A) of the Income Tax Act, 1961 (in short 'the Act') for want of deduction of TDS in respect of the house accommodation provided by the assessee to its employees. The Assessing Officer computed the tax liability in accordance with the Table I of Rule 3 and treating the assessee in the category of the employer other than the Central Government or State Government. The Assessing Officer was of the view that the assessee is neither Central Government nor the State Government nor its employees can be considered holding office or post in connection with the affairs of the union or state. The Assessing Officer accordingly determined the tax liability vide order passed under Section 201(1) and 201(1A) of the Act. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

4. Before us, the learned Authorised Representative of the assessee has submitted that the assessee is established under the Central Silk Board Act, 1948. The assessee is a statutory body functioning directly under the control of Ministry of Textiles, Government of India. The assessee receives annual grant only from Government of India based on budget proposal from the Ministry of Textiles. Such grants are distributed out of consolidated fund of India. Therefore the employees of the assessee are covered by the Govt. of India Pay & Allowances Rules,

Conduct Rules and other rules as applicable to central government employees as per Rule 28 of Central Silk Board Rules, 1955. He has further submitted that its employees are eligible for pension on same scale as central government employees. The accounts for the assessee are actually audited by CAG of India therefore, the perquisite value of unfurnished accommodation provided by the assessee to its employees is required to be worked out in accordance with Sl.No.1 of Table 1 of Rule 3 of IT Rules, 1962. The learned Authorised Representative has thus submitted that the license fees in respect of accommodation fixed as per Govt. of India rules was recovered from the employees and the value of perquisite in respect of unfurnished accommodation was NIL. Further the learned Authorised Representative has submitted that though the assessee has not raised any specific ground however, the assessee has valued the perquisite as bona fide estimate by considering Sl.No.1 of Table 1 of Rule 3 therefore, the assessee cannot be held as assessee in default in respect of the accommodation provided to its employees. He has relied upon the decision dt.27.2.2015 of the co-ordinate Bench of this Tribunal in the case of **Indian Institute of Science (IISC) Vs. DCIT** in ITA No.1589/Bang/2014 as well as decision dt.11.08.2016 in ITA No.1262/Bang/2015 in the case of **ACIT Vs. IISC**. Thus, it was was contended that when the assessee's valuation of perquisite is based on bona fide estimate then no tax liability can be imposed on the assessee.

5. On the other hand, the learned Departmental Representative has submitted that after the amendment to the Rules, the category of employees of public sector undertaking and semi-government

organization has been removed and therefore when the assessee does not fall under the first category being central or state government then the perquisite value has to be computed as per Sl.No.2 category in the Table 1 of Rule 3. He has further contended that an organization that receives grants from government cannot be deemed to be government for the purpose of Rule 3. Further the assessee has significant financial as well as administrative autonomy. The learned Departmental Representative has relied upon the decision of the co-ordinate Bench of this Tribunal dt.4.7.2014 in the case of **Central Food Technology Research Institute Vs. ITO (TDS)** in ITA No.1607 to 1611/Bang/2013 and submitted that an identical fact the Tribunal has held that an autonomous body constituted under the statute receiving grants from the government cannot cannot be treated as government or state for the purpose of Rule 3 of the IT Rules. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as the relevant material on record. As regards the applicability of the Sl.No.2 in Table 1 of Rule 3 for the purpose of computing the perquisite value of the accommodation provided by the assessee, the issue is covered by the decision dt.4.7.2014 of the co-ordinate Bench of this Tribunal in the case of **Central Food Technology Research Institue Vs. ITO** (supra) wherein the Tribunal after discussing all the relevant facts held in paras 10 to 12 as under :

10. We are of the view that the reliance placed by the learned counsel for the Assessee on the aforesaid decision is of any help to the present case. The question in the case of Pradeep Kumar Biswal (supra) was regarding as to whether CSIR is "State" within the meaning of Article 12 of the Constitution of India. As rightly submitted by the learned DR before us, the meaning of the word "State" has been defined in Article 12 of the Constitution of India and the decision has to be confined to those cases and cannot extent to interpretation of Rule 3 of the IT Rules, 1962. Public corporations are established by Government to achieve purpose of welfare state. Financial autonomy and functional autonomy are required for such purpose. These corporations are commercial corporations, development corporations, social services corporations or financial corporations. Such corporations have all trappings of Government but their employees cannot be equated with employees either holding office or post in connection with the affairs of the Union or of such State. Eminent Author Seervai in his book Constitutional Law of India, 1984 Vol II pp.2578-79 has deducted the following principles with regard to the status of employees of a statutory corporation-

(i) a statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State;

(ii) it makes little difference in this respect, whether the Union or the State holds the majority share of the Corporation and controls its administration by policy directives or otherwise;

(iii) it also makes little difference if such a statutory corporation imitates or adopts the Fundamental Rules to govern the service conditions of its employees;

(iv) although the ownership, control and management of the stator 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;

(v) if, however, the State or the Union controls a post under a stator corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union.

11. We are of the view that in the light of the law on Rule 3 of the IT Rules, 1962 as understood by the Hon'ble Supreme Court in the case of Arun Kumar (supra) and the background in which Rule 3 was enacted w.e.f. 1-4-2001 as explained in the CBDT

circular referred to earlier, we are of the view that the applicable rule in the case of the Assessee for the purpose of computing perquisite value would be Sl.No.2 of Table-1 of Rule 3 of the IT Rules, 1962. Accordingly, we uphold the order of the CIT(A) and dismiss the appeals by the Assessee.

12. In view of the fact that the appeals are decided, the petitions seeking stay of recovery of outstanding demand have become infructuous. Accordingly the stay petitions are dismissed as infructuous.

7. However the issue has not been examined by the authorities below from the angle of bona fide estimate made by the assessee while valuing the perquisite. The Tribunal in the case of **IISC Vs. DCIT** dt.27.2.2015 (supra) has dealt with this issue in para 19 as under :

19. We have considered the rival submissions. In our view, the plea of the assessee that it made a *bona fide* estimate of employees salary by valuing the perquisites in the form of residential accommodation provided to the employees by valuing the same as if employees were employees of Central Govt. has to be accepted. In this regard, it is clear from the records that the position with regard to the assessee not being a Central Govt. was brought to its notice by the department only in the proceedings initiated in 2013. Even thereafter, the assessee has been taking a stand that its

employees are employees of Central Govt. As held in several decisions referred to by the ld. counsel for the assessee, the obligation of the assessee is only to make a *bona fide* estimate of the salary. In our view, in the facts and circumstances of the present case, assessee has made such an estimate. The assessee's obligation u/s. 192 is therefore properly discharged and hence proceedings u/s. 201(1) & 201(1A) of the Act have to be quashed and are hereby quashed.

This decision was again followed by the Tribunal in the case of **ACIT Vs. IISC** for the Assessment Year 2011-12 vide order dt.11.8.2016. We further note that it is not a fresh issue raised by the assessee but it is only a plea in respect of the same subject matter and issue of deduction of TDS in respect of the accommodation provided to the employees. Therefore in the facts and circumstances and in view of the decisions of the Tribunal, we set aside this issue to the record of the Assessing Officer to examine the matter in the light of the decisions as relied upon by the assessee as well as by the department.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23rd Oct., 2017.

Sd/-	Sd/-
(INTURI RAMA RAO)	**(VIJAY PAL RAO)**
Accountant Member	Judicial Member

Bangalore,
Dt.23.10.2017.

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