IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C': NEW DELHI)

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 6560/Del/2017
Assessment Year : 2012-13

ACIT Circle-74(1), New Delhi	Vs.	Indian Institute of Technology, Delhi Hauz Khas, New Delhi-110016 PAN : AAATI0393L
(Appellant)		(Respondent)

Assessee by: Shri Karanjot Singh Khurana,
Shri Devashish Jain, &
Ms. Kanika Jain, Advocates
Revenue by : Ms. Maimun Alam, Sr. DR

Date of hearing: 31.10.2023
Date of Pronouncement: .01.2024

ORDER

Per Anubhav Sharma, JM :

The appeal is preferred by the Revenue against the order dated 31.08.2017 of Commissioner of Income Tax (Appeals)-41, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal no. 245/14-15, A.Y. 2012-13 arising out of an appeal before it against the order dated 26.03.2014 passed u/s 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, TDS, Circle-50(1), New Delhi (hereinafter referred as the Ld. A.O).

2. Brief facts of the case are that the assessee is an institution set up under The Institutes of Technology Act, 1961 (for short the 'IIT Act'), as an educational institution in Delhi. Admittedly it is funded by and works under the administrative control of the Ministry of Education (erstwhile Ministry of HRD), Government of India.

2.1. In accordance with the provision of the IIT Act, the Ministry of Scientific Research and Cultural Affairs, Government of India vide F. 25-10/62-T.6, dated 15.10.1963 framed the 'Indian Institute of Technology, Delhi Statutes ('IIT Statutes') for the Respondent.

2.2. As per the said "IIT Statutes", every employee of the Institute may be allotted an unfurnished house within the campus of the Institute for residential use in which he shall be required to reside, and shall be charged a prescribed license fee'. The amount of the license fee is decided under law and is deducted by the Respondent before the salary is paid to the employee.

2.3. The Ld. AO for the AY 2012-13, passed an order under Section 201 of the Act on 26.03.2014, holding that the Respondent was required to deduct tax at source on the perquisite value of accommodation provided to the employees at the rate of 15 percent of salary. As per Ld. AO, the perquisite on accommodation provided to the employees of the Respondent was to be computed in accordance Section 17(2)(ii) of the Act.

2.4. Aggrieved by the aforesaid order, the assessee had filed an appeal and the Ld. CIT(A) placing reliance on the Tribunal's Guwahati Bench order in the case of **Indian Institute of Technology, Guwahati v. ITO (TDS), bearing ITA No. 101 (Gau) of 2006** held that there was no perquisite value of rent-free accommodation provided to employees and deleted the demand.

2.5 Aggrieved by the order of the Ld. CIT(A), Department has filed an appeal before this Tribunal raising following grounds:-

> *"1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that there is no perquisite value of the rent-free accommodation provided to the employee.*
>
> *2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) had erred in not appreciating that IIT Delhi has a PAN allotted ofits own and is assessed to tax in that capacity and not a government authority, it is a Govt. funded organisation hence not exempted from addition of perquisite valuation of RFA (rent Free Accommodation) in their employee's income. As such the IIT Delhi is an autonomous body and therefore it has to add 15% of salary as perquisite on accommodation in the total income of the employee having rent free accommodation.*
>
> *3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) had erred in appreciating the fact that number of employees having a total salary of Rs.4.66 Crore are availing the benefit of RFA as according to details submitted by the deductor during verification proceedings.*
>
> *4. The appellant craves leave to add, alter or amend any of the grounds of appeal at the time of hearing."*

3. Heard and perused the record. Ld. DR has contended that Ld. CIT(A) has fallen in error in holding that assessee falls in the definition of Government. He relied the Hon'ble Supreme Court judgment in ***Indian Institute of Science V. DCIT [2022] 141 taxmann.com354 (S.C)*** to hold that in that case also the assessee was an autonomous institution of Government and Hon'ble Supreme Court has held that they cannot be treated on par with Central/State government employes for the purpose of Rule 3.

4. Ld. AR contended that taxation of employees of the Assessee should be at par with Central/State Government Employees. It is submitted that the Ld. CIT(A) in his order has correctly observed that while autonomous body like Respondent is not Government owing to the similarity in the salaries provided to the employees of the Respondent, the computation of perquisite for

accommodation should be at par with other Government employees. In this regard, it was submitted that it is pertinent to understand the level of Central Government involvement in the functioning of the Respondent Assessee. The Ld. AR referred to various clauses of IIT Act to submitted that the composition of the assessee and ownership of land on which assessee institute exists, power to dispose this land, constitution of board as appointed by the office of President of India, duties enshrined under the IIT Act, the funding of the activities of assessee, accounting in the form prescribed by Central Government in consultation with Comptroller and Auditor General of India, requirement that the Statutes framed under the IIT Act will require approval of the President of India and the facts like following were relied;

- The employees are entitled to allowances and facilities as per the Central Government regulations.
- The recruitment, promotion, and termination of employees are subject to control by the Central Government.
- The unfurnished accommodation is provided to the employees upon payment of prescribed licensee fee, subject to conditions laid down by the Respondent's Board and the employee is required to reside in this accommodation.

4.1 In light of aforesaid Ld. AR submitted that the CIT(A) has rightly extended the benefit available to government employees to the employees of the Respondent too, since there is no material difference in terms of their employment, for the purpose of Section 17(2) of the IT Act

4.2 ld. AR also relied the order in case of Indian Institute of Technology, Guwahati, ITA No. 101 (Gau) of 2006 wherein the Guwahati ITAT decided in favour of the Respondent (i.e., an IIT) in identical facts, deleted demand made

under section 201(1) of Income-tax Act, 1961. The demand was also deleted by ITAT Bangalore in the case of M/s. Employees Provident Fund Organisation v. DCIT (TDS), ITA No. 442 to 444/Bang/2023 on same lines.

5. Ld. AR further submitted that in the present case, the assessee charges license fee' from the employees to whom the residential flats are allotted at the rate notified by the Central Government. In doing so, all the employees who are similarly situated, are treated alike. Accordingly, it is submitted that no concession has been extended by the Respondent to its employees. Hence, the perquisite value of the accommodation provided to the employees should be treated as NIL and reference was made to Hon'ble Supreme Court decision in the case of **Arun Kumar v. Union of India, (2006) 286 ITR 89** and the order of Tribunal in the case of **Superintendent (DDO): [2012] 24 taxmann.com 203 (Delhi).**

6. Ld. AR submitted that the accommodation is not provided as a benefit but as a compulsion in terms of Clause 18(1) to IIT Statutes which provides as under:

> *"(1) Every employee of the Institute may be allotted an unfurnished house within the campus of the Institute for residential use, if available, in which he shall be required to reside, subject to such conditions as may be laid down by the Board."*

7. After giving thoughtful consideration to the matter before us and the submissions we are of the considered opinion that **Indian Institute of Science, case (supra)** squarely applies upon the assessee and mere fact that assessee is a Institution which has come into existence by an Act of Parliament and the various clauses of the IIT Act and the IIT Statues, relied by the Ld. AR, which establish that there is some control of the Central Government, does not elevate the status of assessee of Central Government. It will be relevant to reproduce

the para 8 of the judgment of Hon'ble Karnataka High Court in **Indian Institute of Science V DCIT [2022] 140 taxmann.com 661** (Kar), which was approved by Hon'ble Supreme Court in case of Indian Institute of Science (supra), hereinbelow:-

> *"8. Thus, it is evident that the value of residential accommodation provided by the Central Government or any State Government to the employees either holding office or post in connection with affairs of the Union or of such State or serving with any body or Undertaking under the control of such Government on such deputation has to be determined in the manner provided in Column Nos.3 and 4 of Sl.No.1 of Table 1 of Rule 3 of the Rules. The assessee, which is a Trust under the 1890 Act, is controlled and financed by the Central Government. The assessee is a Body or an undertaking controlled by the Central Government, governed by the Rules governing the service conditions of the employees of the Central Government. The assessee may be an instrumentality of the State of for the purpose of Article 12 of the Constitution of India. However, for the purposes of Rule 3, the requirement is that the accommodation should be provided by the Central Government or State Government to the employees either holding office or post in connection with affairs of Union or of State or serving with any body or 16 undertaking under the control of such government from deputation. The aforesaid expression is unambiguous and unclear and therefore, its meaning cannot be expanded to include any body, undertaking under the control of Central Government. Merely because assessee is a body or undertaking owned or controlled by the Central Government, it cannot be elevated to the status of Central Government. Thus, the assessee cannot claim that valuation of perquisites in respect of residential accommodation should be computed as in case of an accommodation provided by the Central Government. Therefore, Sl.No.1 of Table 1 of Rule 3 of the Rules does not apply to the assessee. The substantial questions of law No.1 and No.2 are answered against the assessee and in favour of the revenue."*

8. Thus we are of considered view that Ld. CIT(A) has fallen in error to hold that assessee falls in category of Central Government. Rather Ld. CIT(A) has fallen in error in relying the Guwahati Bench order in case of IIT, (supra), as in that case the Tribunal had not directly dealt with the issue if IIT, falls in status of Central Government for the purpose of Rule 3 but had given benefit to

that assessee for not being considered assessee in default u.s 201(1) of the Act, as there was a bonafide explanation with the department.

9. At the same time what is established is that judgment of Guwahati Bench is of 23.08.2007 which Ld. CIT(A) has taken note of while passing impugned order on 31/8/2017. The judgment of Hon'ble Supreme Court, which Ld. DR has relied in case of Indian Institute of Science is of 14/07/2022, which certainly was not there as a precedent for the Ld. CIT(A).

10. However, we observe that Ld. AO had relied the judgment of Hon'ble Supreme Court of India in the case of **Union of India versus Arun Kumar (2006) 286 ITR 89 (SC)** to consider that Hon'ble Supreme Court has held that Rule 3 is not violative of Article 14. It comes up that before Ld. CIT(A) assessee had taken a specific plea that no 'concession' at all was provided to the employees in respect of rent and therefore Rule 3 is not applicable. This aspect has not all been dealt by the Ld. CIT(A) in the impugned order. Ld. AR, while supporting the order of Ld. CIT(A), has again canvassed this argument before us which we find is considerable under Rule 27 of the ITAT Rules, 1963.

11. Hon'ble Supreme Court of India in the case of **Arun Kumar (supra)** has taken into consideration an important aspect of Rule 3, that the same would apply only to cases where 'concession' has been shown by an employer in favour of an employee in the matter of rent respecting accommodation. Hon'ble Supreme Court has also held that determination of 'concession' is jurisdictional fact. It is only when there is a 'concession' in the matter of rent respecting any accommodation provided by employer to his employee that the mode, method or manner as to how such concession can be computed arises. It will be appropriate to reproduce the relevant part of paras 79 and 86 of the judgement in case of **Arun Kumar (supra)** here in below;

" Para 79 ....If the assessee contends that there is no 'concession', the authority has to decide the said question and record a finding as to whether there is 'concession' and the case is covered by Section 17 (2) (ii) of the Act. Only thereafter the authority may proceed to calculate the liability of the assessee under the Rules. In our considered opinion, therefore, in spite of the legal position that Rule 3 is intra vires, valid and is not inconsistent with the provisions of the parent Act under Section 17 (2) (ii) of the Act, it is still open to the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employee and hence the case did not fall within the mischief of Section 17 (2) (ii) of the Act."

"Para 86 We are, however, not inclined to enter into larger question as in our view, it is not necessary in the light of statutory provision relating to 'concession' in the matter of rent respecting any accommodation' in Section 17(2)(ii) of the Act. We are of the view that Rule 3 would apply only to those cases where 'concession' has been shown by an employer in favour of an employee in the matter of rent respecting accommodation. Thus, whereas 'charging provision' is found in the Act of Parliament [Section 17(2)(ii)], 'machinary component' is in the subordinate legislation (Rule 3). The latter will apply only after liability is created under the former. Unless the liability arises under Section 17(2)(ii) of the Act, Rule 3 has no application and the method of valuation for calculating concessional benefits cannot be resorted to."

12. The Delhi Bench in the case of **Superintendent (DDO) versus ITO (TDS), [2012] 24 taxmann.com 203 (Delhi)** has taken into consideration judgement of Hon'ble Supreme Court of India in the case of **Arun Kumar**

(supra) and held that without first establishing that assessee employer had provided accommodation to the employees at concessional rates, the assessing officer cannot straightaway invoke Rule 3 for computing value of the perquisite and treat assessee in default in deducting tax at source on said value.

13. Therefore, we are of the considered view that though Ld. CIT(A) has fallen in error in holding that assessee falls in status of Central Government for the purpose of Section 17(2) of the Act, the impugned order of Ld. CIT(A) still deserves to be upheld as Ld. AO has fallen in error by straightaway invoking Rule 3 for computing value of the perquisite and treat assessee in default in deducting tax at source on said value, without first recording a finding as to whether there is 'concession' and the case is covered by Section 17 (2) (ii) of the Act.

14. **Resultantly the appeal of Revenue is dismissed.**

Order pronounced in the open court on 11th January, 2024.

Sd/-	**Sd/-**
(M. BALAGANESH)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date: 11.01.2024

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Copy forwarded to:

1. Appellant
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4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI