

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.**

ORIGINAL APPLICATION NO. 1078 OF 2001.

ALLAHABAD THIS THE 21 DAY OF August 2007.

**Hon'ble Mr. Justice Khem Karan, V.C.**

B.N Singh, aged about 59 years, 11 months, son of late Jang Bahadur Singh, resident of 10/470-B, Khalasi Line, Kanpur, presently employed as Chief Commissioner of Income Tax, Kanpur.

.....Applicant

(By Advocate: Shri Raj Kishore Upadhyay/Shri A.K. Singh/Shri N.K. Nair/ Shri M.K. Upadhyay)

Versus.

1. Union of India through the Secretary, Department of Finance, Government of India, North Block, New Delhi-110001.
2. Central Board of Direct Taxes, North Block, New Delhi-110001.
3. Principal Chief Controller of Accounts, Central Board of Direct Taxes, 9<sup>th</sup> Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
4. Deputy Controller of Accounts, Central Board of Direct Taxes, Zonal Accounts Office, Ayakar Bhawan, 16/69, Civil Lines, Kanpur-208001.
5. Zonal Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes, Ayakar- Bhawan, 16/69, Civil Lines, Kanpur -208001.

.....Respondents

(By Advocate: Shri S. Singh)


**ORDER**

While being posted in Kanpur Nagar as Chief Commissioner of Income Tax, applicant took on rent premises No.10/470-B situating in Khalasi Line, Kanpur from British India Corporation Ltd. on a rental of Rs.750/- a month and resided therein as Tenant from 1.7.1995 till his superannuation on 30.8.2001. He charge of House Rent Allowance (HRA) from 1.7.95 to 30.9.98. It appears that in 1998, respondents discovered that since the applicant was residing in an accommodation provided by British Corporation of India, a Government





undertaking, so under the Rules, was not entitled to House Rent Allowance. Senior Accounts Officer (CDN) of Principal Chief Controller of Accounts, Central Board of Direct Taxes, New Delhi issued a letter addressed to Zonal Accounts Officer, stopping payment of House Rent Allowance to the officer of Income Tax Department occupying in accommodation rented by British India Corporation Ltd.. Copy of letter is Annexure A-1. Applicant gave a detailed representation dated 20.11.2000 (Annexure A-5) to the Chairman, Central Board of Direct Taxes, New Delhi justifying payment of House Rent Allowance and saying that his predecessor-in-office, Shri B.P. Gupta and Shri T.K. Das occupying such accommodation, were not saddled with the liability of refunding the amount of H.R.A. Vide letter dated 17.4.2001 (Annexure A-6), Govt. of India provided that matter regarding admissibility of House Rent Allowance to the applicant had been examined in consultation with the Department of Expenditure and it had concurred to disbursement of House Rent Allowance to the applicant subject to the condition that rent charged by British India Corporation Ltd. was not on concessional or subsidized rate and agreement between the applicant and British India Corporation Ltd. was the private one. Armed with this letter dated 17.4.2001, applicant wrote on 11.5.2001 (Annexure A-7) to the Zonal Accounts Officer enclosing certificate issued by British India Corporation Ltd., saying the rent was not subsidized or concessional and arrangement between it and the applicant was private one. Senior Accounts Officer, office of Chief Controller of Accounts, C.B.D.T wrote to the applicant saying that in terms of Govt. of India's letter dated 27.10.1994, a Government servants staying in State Bhawan, Guest House or State Government/Autonomous body was not entitled to House Rent Allowance and since rent paid by the applicant for accommodation in question, was less than 10% of his basic pay, so the same was to be treated on concessional rate. Applicant gave another representation dated 24.5.2001 (Annexure A-10) to Dy. Controller of Accounts (C.B.D.T.) questioning the stand taken in the communications made by the Senior Accounts Officer and Zonal Accounts Officer etc. and saying that Govt. order dated 27.10.1994 cannot be pressed into service in his case as the same related to the Govt. servants staying in Delhi during the course of posting. The matter reached the Principal Chief Controller of Accounts, C.B.D.T. with a copy of letter dated 31.5.2001 written by Senior Accounts Officer, Z.A.O. Kanpur and that copy of representation dated 24.5.2001 of the applicant. The applicant gave another representation dated 6.6.2001 justifying his stand that he was entitled to House Rent Allowance. It appears the internal Audit report No.17 for the year



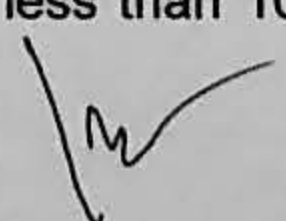


1999-2000 asked for recovery of sum of Rs.66490/- from the gratuity payable to the applicant. Payment of House Rent Allowance has already been stopped from 1.10.1998.

2. The applicant is challenging stoppage of payment of House Rent Allowance from 1.10.1998 to 30.8.2001 and recovery of Rs.66490/- in terms of letter dated 13.7.2001 (Annexure A-4). He prays that the amount should not be recovered as per para 17 of the Audit Report and House Rent Allowance for the period from October 1998 to 30.8.2001 be paid to him together with interest at the rate of 18% per annum.

3. The sum and substance of his case is that since rent of accommodation in question was not subsidized or concessional and since negotiation between him and British India Corporation Ltd. letting that accommodation, was private one and since he had also to meet the expenses, to be incurred in undertaking periodical or other repairs, so he was entitled to House Rent Allowance. He has cited the cases of other officers of department who were in occupation of similar building of British India Corporation Ltd.

4. The respondents have filed reply, saying that under part-V of Fundamental Rules and Subsidiary Rules dealing with House Rent Allowance a Government servant shall not be entitled to House Rent Allowance, if he or she resides in accommodation allotted to him or her by the Central Government/State Government/Autonomous/ Public undertaking or some Govt. organization/Port Trust, Nationalized Bank, Life Insurance Corporation of India etc. They say that in Kanpur, Commissioner of Income Tax and Chief Commissioner of Income Tax have been allotted big bungalows by the British India Corporation Ltd. and this practice is in vogue quite since long. They say in para 3 (iii) that British India Corporation Ltd. is sick public sector undertaking and Government of India gives a huge grants to sick public sector undertaking, so allotting bungalow on the concessional rent is a huge loss to the Government. It is said that applicant got said accommodation of British India Corporation Ltd. on a very cheap and concessional rent of Rs.750/- a month. They go on to state in para 3 (iv) that House Rent Allowance is given to the officer to meet out the expenses incurred on their accommodation and it cannot be treated as a source of income or profit. It is also said that rental of Rs.750/- a month being less than 10% of basic pay,



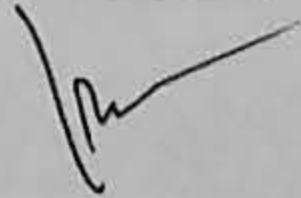


has to be treated concessional or subsidized. Referring letter dated 3.3.1999 (Annexure 1) issued by Department of Revenue, they have tried to say in para 3 (v) that contract between the applicant and British India Corporation Ltd. (in circumstances) cannot be said to be private one as applicant was allotted the accommodation because he was holding the office of Chief Commissioner of Income Tax. They say in para 3 (vi) that earlier Chief Commissioner of Income Tax, who stayed in British India Corporation accommodation were also disallowed House Rent Allowance but on representation of Shri B.P. Gupta and Shri T.K. Das, former Chief Commissioner of Income Tax, they were exempted from refunding amount of House Rent Allowance, as is clear from letter dated 16.10.1998 (Annexure 2 to the counter). They say that this waiver can not be treated to be precedent for claiming the benefit in question.

5. Applicant has filed rejoinder affidavit, almost reiterating the pleas already taken in the O.A. He says Rule 5 (C) (ii) of F.R.S.R. Part 5 is not attracted to his case, nor O.M dated 5.8.1997. He refers to Rule 7 of General Rules regarding House Rent Allowance and CCA and also states that accommodation allotted to Shri B.P. Gupta the then Chief Commissioner of Income Tax and thereafter to Shri T.K. Das, was bigger as compared to accommodation taken by him and the rent of that bigger accommodation was Rs.650/- a month only and so it cannot be said that rental of Rs.750 was concessional. It is also said that at the time, he took the accommodation in question on rent, the rate of rent was more than 10% of basic pay. It is also said in para 19 of the rejoinder affidavit that there was nothing special or extraordinary in the cases of Shri B.P. Gupta and Shri T.K. Das and there were no good ground to give different treatment to him

6. I have heard Shri R.K. Upadhyay appearing for the applicant and Shri S. Singh for the respondents and have perused the entire material on record.

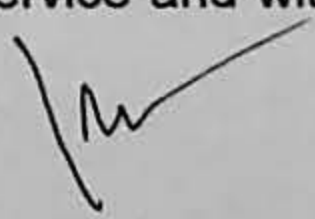
7. The sole question that arises for answer is as to whether applicant was entitled to House Rent Allowance during the period, he resided as tenant in premises No. 10/470-B situating in Khalasi Line, Kanpur. There is no dispute on the point that payment of House Rent Allowance to the Government servant is regulated by the Rules or Government orders. The applicant himself relies on letter dated 17.4.2001 (Annexure A-6) issued by Government of India in the Ministry of Finance and Revenue. It appears that





matter relating to the applicant was examined in consultation with Department of Expenditure, and it concurred to the drawal of House Rent Allowance to him, subject to the Condition that the rent charged by British India Corporation was not concessional or subsidized one and agreement between him and British India Corporation was private one. What the applicant states is that rent, in his case, was not concessional or subsidized and agreement between him and British India Corporation was private one. According to him, since he had also to bear expenses to be incurred in annual and periodical repair of the building so from that angle rent was not concessional and subsidized. Attempt has also been made to say in the rejoinder that bigger bungalows of British India Corporation in occupation of his predecessors-in-office or rent was even less than one, which he was to pay. On the other hand, respondents have tried to say that rent was concessional because it was less than 10% of the basic pay and the negotiation in between the applicant and British India Corporation, a public undertaking, cannot be said to be a private affairs. They say that applicant was given this house by British India Corporation, because he was posted as Chief Income Tax Commissioner, Kanpur.

8. This Tribunal is not expert in assessing as to whether rent of Rs.750/- a month for the premises in question in a city like Kanpur Nagar, was concessional or subsidized such a matter which has to be looked into by the officials, charged with the task of deciding whether one allowance or the other, will be admissible to a Government servant because of concessional or subsidized rate of rent. The Tribunal has no idea about the size of accommodation or about the normal rate of rent of similar buildings during the period in question. So it is not expected to pronounce as to whether the rent of Rs.750/- a month, was subsidized or concessional one. After-all why these public Authorities, who say so will speak against the applicant or speak against the interest of the Senior Officers. The objection raised by the Accounts Section of Department is not confined to the case of applicant. Applicant himself refers to the case of his predecessors-in-office. Shri B.P. Gupta and Shri T.K. Das, former Chief Commissioner of Income Tax, Kanpur and wants parity in treatment. Letter dated 16.10.1998 (Annexure 2 to the reply) written by Government of India in the Ministry of Finance and Revenue deals with the case of Shri B.P. Gupta. It says that the department of Expenditure has taken a conscious decision, treating the case of Shri B.P. Gupta as a special one because he had retired from service and withholding

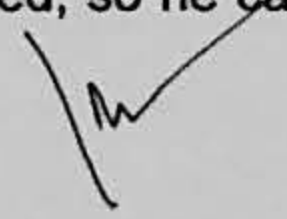




of amount of Rs.22710/- from his gratuity was a case of genuine hardship to him and moreover the house was taken privately and rent was not concessional as certified by British India Corporation and letters says that taking into consideration, all these aspects directions were given in releasing the withheld amount. It says that the case of Shri B.P. Gupta cannot be applied to the case of his successors. This letter of the Government of India makes it clear that in case where a Government servant has taken an accommodation on rent from British India Corporation, he will be entitled to the House Rent Allowance only if rent is not concessional or subsidized and negotiation about letting is a private one. I need not refer to the G. O No.1994 or to other Rules so as to say that a government servant occupying such accommodation from public undertakings will not be entitled to House Rent Allowance unless the rent is concessional or subsidized or the agreement between him and the undertaking is private one.

9. The applicant claims that British India Corporation has certified that the rent is not concessional and the agreement between him and British India Corporation is private one, so he should also have been given the similar treatment as was meted out to Shri B.P. Gupta. It appears, he has represented to the Chairman, Central Board of Direct Taxes for giving him the similar treatment as he has also retired but nothing favourable to him could come from there. Whether the Govt. of India will like to give similar treatment to the applicant is the matter to be looked into by them and this Tribunal cannot issue any direction in that regard except this that applicant can make a request to them to consider his case and give him the same treatment as was meted out to Shri B.P. Gupta.

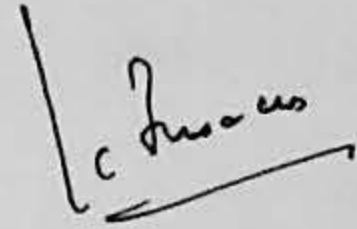
10. I am of the view that under the Rules, the applicant was not entitled to House Rent Allowance during the period, he resided in the said accommodation as found by the respondents, so the question of directing the respondents to pay him House Rent Allowance for the period from October 1998 to the date of retirement on 30.8.2001 does not arise. The question is as to whether amount, which he received as House Rent Allowance during the period from 1.7.1995 to 30.9.1998 can be recovered from his retiral benefits. I think unless the Govt. exempts him from liability of refunding that amount, which he received as House Rent Allowance from 1.7.1995 to 30.9.1998, he cannot get rid of that liability. Since of one his predecessor Shri B.P. Gupta was given benefit on the ground that he had retired, so he can request again



the Government or Chairman, Central Board of Direct Taxes, to give him similar treatment in the matter relating to recovery of amount from his retiral dues.

11. So, the O.A. is finally disposed of with a direction that in case the applicant gives a fresh representation to respondents No.1 and 2 for exempting him from the liability of refunding of Rs. 66490/-which he received as House Rent Allowance from 1.7.1995 to 30.9.1998, and for not deducting the same from his retiral benefits, they will consider such request keeping in view the earlier case of Shri B.K. Gupta, former Chief Income Tax Commissione, Kanpur and pass suitable orders, within a period of 2 months from the date representation is so given together with copy of this order. The prayer of the applicant for payment of House Rent Allowance from 1.10.1998 to 30.8.2001 is refused.

No costs.



Vice-Chairman

Manish/-