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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE 7th DAY OF JUNE 1996

ORIGINAL APPLICATION NO. 658 OF 1992

CORAM : Hon'ble Mr. S. Das Gupta A.M.
Hon'ble Mr. T.L. Verma. J.M.

Vidya Shanker Tripathi
S/O Sita Ram Tripathi, Guard, N.Rly.,
Allahabad through Keshav Pd. Misra.
Secretary Uttariya Railway Mazdoor Union,
Allahabad Division, Allahabad.----- Applicant

C/A Sri B.K. Srivastava

Versus

1. Union of India through Secretary Govt. of India,
Ministry of Railways, Rail Bhawan,
New Delhi.
2. General Manager, Northern Railway,
New Delhi.
3. Senior Divisional Personnel Officer,
Northern Railway, Allahabad.

4. Union of India through Chairman,
Central Board of Direct Taxes,
Ministry of Finance, New Delhi.----- Respondent

* corrected
in pursuance
of the order passed
in M.A. no 1433/96
W.B. 5/6/96

C/R Sri Prashant Mathur & Sri Ashok Moholey *

WITH

W.B.

2. ORIGINAL APPLICATION NO. 608 OF 1992

CORAM : Hon'ble Mr. S.Das Gupta. A.M.
Hon'ble Mr. T.L.Verma. J.M.

Keshav Dayal Guard-Mail/Express,
(Chief Controller), Northern Railway,
Allahabad, resident of 86 EF,
10th Avenue, Nawab Yusuf Road,
Allahabad. ----- Applicant

C/A Sri B.K.Srivastava.

VERSUS

1. Union of India through Secretary, Govt. Of India.,
Ministry of Railways, Rail Bhawan,
New Delhi.
 2. General Manager, Northern Railway,
New Delhi.
 3. Sr. Divisional Personnel Officer,
Northern Railway, Allahabad.
 4. Union of India through Chairman,
Central Board of Direct Taxes,
Ministry of Finance, New Delhi.
- Respondents

C/R Sri Bharat Bhushan & Shri. Ashok Mohile*

ORDER

By Hon'ble Mr. S.Das Gupta. A.M.

Since both the applications involve common question of facts and law, these are being decided by a common order.

* Corrected in
butcher's
order passed
on 22.11.1996
W.C.
8/1/96

W.C.

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2. The applicants in both the O.As belong to the cadre of running staff in the Allahabad division of Northern Railway. They are aggrieved by the order dated 24.2.1992 issued by the General Manager (F), Northern Railway, letter dated 7.4.1992 issued by the Sr.D.P.O., Northern Railway, Allahabad and the letter dated 8.4.1992 issued by the A.P.O., Northern Railway Allahabad. Through these letters respondents have sought to revise the incometax liability of the applicants and to make recovery of short deduction. Applicants have prayed that these orders be crushed and a direction be issued to the concerned authority not to revise the tax liability for the purpose of deduction at source for the financial year 1991-92 and not to make recovery of any short deduction for that year from the salary bill of the applicants for the month of April, 1992 till the provision of Indian Railway Establishment Manual is amended. The further direction prayed for is that 70% of running allowance may continued to be treated at par with travelling allowance.

3. The running staff of the railways are granted running allowance, which is defined in item (V) of para 902.2 of Indian Railway Establishment Manual, Volume I (I.R.E.M. for short), which a part of the according to, running allowance is reckoned as pay. para 903 of Indian Railway Establishment Manual defines the pay element of running allowance as 30 percent of the basic pay of running staff to be treated in the nature of pay. The pay elements in the running allowance is reckoned for various benefits. It is also reckoned as part of income for the purpose of deduction of incometax. In item (V) of para 924 of I.R.E.M. percentage of running allowance for the purpose of deductio

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of incometax has been fixed as 30 percent of the actual running allowance earned by the running staff. Balance 70 percent of running allowance was to be exempted under section 10(14) of the Incomet-ax Act 1961. Incometax in respect of the applicants was being deducted at source on this basis till the financial year 1991-92.

4. The provision of deduction of tax of the running allowance underwent a change when the provision of section 10(14) of incometax Act was amended and the notification dated 21.2.1989 was issued. By the aforesaid notification, a ceiling of Rs.1000/- was imposed on the 70 percent of the running allowance to be exempted from deduction of incometax. Based on this, respondents issued impugned letters seeking revision of incometax liability of the applicants and also ^{for} making recovery of short deduction made in the financial year 1991-92 from the salary bill of April, 1992.

5. Broadly the applicants have pleaded that as there is no corresponding amendment to relevant provision of I.R.E.M., railway administration cannot revise their tax liabilities based on the amendment issued by the Central Board of Direct Taxes. Further, their contention is that in any case, short deduction made in the financial year 1991-92 cannot be made good by making recovery of the short deduction from the salary bill of April, 1992, as such deduction would be in the financial year 1992-93.

6. The respondents who belong to Northern Railway have filed written reply in which they have pleaded that since the Central Board of Direct taxes had issued a notification, amending the tax liability to deduct tax

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in respect of the running allowance, they have statutory liability to deduct tax at source from the salary bills of the applicants in accordance of the amended provision of the Incometax Act. They have also pleaded that unless they make recovery from the salary bill of the applicant for short deduction in 1991-92, they would face consequence of failure to deduct tax in terms of section 201 of Incometax Act. A separate C.A. has also been filed on behalf of the respondent no.5, which is the Central Board of Direct taxes. They have submitted that by notification dated 21.1.1989 amended by notification dated 27.3.1990, Government of India in exercise of powers, conferred ^{by} clause (11) of clause 14 of section 1 of the Incometax Act has clarified inter alia that 70 % of running allowance granted to the employees working in any transport system to meet his personal expenses during duty performed in the course of running of such transport from one place to another, shall be exempted from incometax to the extent of 70 percent of such allowance upto a maximum of Rs.1,000/-. Their contention is that the dispute between the railway authority and the applicants regarding the manner in which deduction was being made does not relate to them.

7. The applicants have filed rejoinder affidavits, in which they have reiterated that their applications are not against the notification issued by the Incometax authority, but against the railway authorities, who are seeking to revise the tax liability for the financial year 1991-92 after that financial year has already come to an end and to make recovery of short deduction from the pay of April 1992 which falls in the next financial year.

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8. We have heard the learned counsels for both the parties and carefully perused the records.

9. It is quite clear from the relevant provisions of the Incometax^{Act} that the tax liability during a particular financial year is to be recovered at source from the salary pertaining to that financial year only. During the course of argument, learned counsel for the applicant also showed us communication exchanged between the Central Board of Direct Taxes and the learned counsel for the applicant in which it has been specifically clarified by the Central Board of Direct Taxes that short deduction of tax during financial year 1991-92 cannot be made good by deducting the same demand from the salary payable in the next financial year i.e. 92-93. We are, therefore, fully in agreement with the applicants that the railway administration can not deduct short recovery made in the financial year 1991-92 from the salary bill of April, 1992.

10. We cannot, however, accept the contention of the applicants that in order to revise their tax liability on the running allowance, it is mandatory that the relevant provision in the I.R.E.M. is to be amended. Notification issued by the department of revenue^{Central} Board of Direct taxes will have an over-riding effect, and any provision in the I.R.E.M. which is repugnant to the provision of Incometax Act shall have no force. Applicants are, therefore, liable to pay incometax on the running allowance drawn by them in accordance with the provision of the notification issued by the Central Board of Direct Taxes from time to time in that regard. Infact this position was not seriously contested by the applicants

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as would be clear from their submissions in the rejoinder affidavit.

11. In view of the foregoing, applications are allowed in part. Railway authorities are restrained from making any recovery from the salary bill of April, 1992 or from any subsequent salary bill of short deduction in respect of incometax on the running allowance during the financial year 1991-92. This does not, however, affect the liability of the applicants to pay the amount less recovered from their salary on this count and the Central Board of Direct Taxes shall be at liberty to realise the short deduction in any other manner under the provision of Incometax Act except by way of deduction at source.

12. Both the applications are disposed of with the above directions. Parties shall bear their own cost.

J.M.

A.M.

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