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CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JA BALPUR

Original Application No.222 of 2006

Jabalpur this the 30th day of October, 2006.

Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

Shri Syamal Kumar Chattopadhyay (S.K. Chattopadhyay), Commissioner of Incometax-1, Aayakar Bhawan, Napier Town, Jabalpur-482001 (MP)

-Applicant

(By Advocate – Shri Rajendra Tiwari Sr.Advocate
along with Shri A.P.Shrivastava)

V E R S U S

1. Union of India Through Secretary (Economic Affairs)
Ministry of Finance, North Block, New Delhi-110 001

2. Union of India, through Secretary (Revenue), Ministry
of Finance, North Block, New Delhi-110 001.

3. The Chairman, Central Board of Direct Taxes,
Ministry of Finance, North Block, New Delhi-110 001.

4. The Director of Incometax (Infrastructure), 7th floor,
Mayur Bhawan, Connought Circus, New Delhi-110 001

5. The Chief Commissioner of Incometax-1, 3rd Floor,
Aayakar Bhawan, Maharishi Karve Road, Mumbai-
400020.

-Respondents

(By Advocate – Shri S.K.Mishra)

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ORDER**By Dr.G.C.Srivastava,VC.-**

This OA has been filed against the order of Central Board of Direct Taxes, communicated by the Chief Commissioner of Income-tax-I, Mumbai through his letter dated 4.4.2006 (annexure A/1) informing the applicant that his request for further retention of government accommodation at Flat No.D-7,IT Colony, Peddar Road, Mumbai for four months has not been acceded to by the Central Board of Direct Taxes (for short 'CBDT') and he was directed to vacate the flat immediately failing which he would have to pay the licence fee at the fair market rent of Rs.1,03,500/- per month with effect from 11.4.2006. The applicant has accordingly prayed for the following main relief:

“8.1 quash the order of the CBDT as conveyed by the DIT (Infrastructure) through his letter dated 24.03.2006.

8.2 Also quash the order of the CCIT-I, Mumbai dated 04.04.2006.

8.3 The Chairman, CBDT may be ordered to review the case of the applicant in view of the facts as noted above. He may be asked to accede to the application of the applicant for retention of the flat up to 31.05.2006 on the ground of education of his children and ensuing law examination of applicant's children which will start from 24.04.2006 to 16.05.2006. The CCIT-I, Mumbai may be asked to bear in mind that it is actually not feasible on the part of the applicant to vacate the flat by 11.4.2006 when the examination of his children starts from 24.04.2006.

8.4 The applicant may be allowed to retain the flat till 31.5.2006 at the existing rate and not at the rate proposed by the CCIT at Rs.1,03,500/- per month w.e.f.11.4.2006”.

The applicant also prayed for interim relief “to restrain” the impugned order till the disposal of this OA. This prayer was not

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granted as the impugned order was not an order of eviction from the occupied flat but only a request to vacate the flat immediately failing which the applicant would have to pay the licence fee at the fair market rent.

2. The uncontroverted facts are that the applicant was allotted flat no. D-7, I.T.Colony, Peddar Road, Mumbai, while he was posted in the Income-tax department in Mumbai. He was transferred from Mumbai to Jabalpur, where he joined on 11.7.2005. Consequent to his transfer, the applicant applied for retention of the said government accommodation for 8 months on the ground that his two sons were studying in KC College of law, Mumbai. The request was acceded to and the Chief Commissioner of Income-tax, Mumbai approved the retention of the flat for the period from 1.7.2005 to 28.2.2006. The applicant made payments of the prescribed licence fee from time to time. On 18.1.2006, the applicant submitted another application (annexure A-4) for further retention of the aforesaid accommodation for four months from 1.3.2006 to 30.6.2006 on the ground that the law examination of his sons were scheduled to be held in April-May, 2006. This request was not agreed to by the Chief Commissioner of Income-tax, Mumbai (annexure A-9 dated 3.2.2006) on the ground that as per rules the allottee could be allowed to retain the accommodation for a maximum period of 8 months. Thereafter, the applicant submitted a representation on 7.2.2006 (annexure A-10) to the Chairman, CBDT through proper channel for consideration of the request. This request was not acceded to by the CBDT as communicated to the Chief Commissioner of Income-tax, Mumbai through letter dated 24.3.2006 (annexure A-13). This message was passed on to the applicant through the impugned order.

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3. The applicant has challenged the impugned order on the ground that as per the order issued by the CBDT on 13.2.2006 (annexure A/11) retention up to further four months beyond 8 months can be permitted by the CBDT on grounds of education of children or other cases of genuine hardship. It has further been submitted by the applicant that his request has been rejected on account of a subsequent clarification issued by the CBDT on 21.3.2006 (annexure A-12) stating that "the rule for retention of accommodation for a period up to 4 months (beyond 8 months of transfer on the grounds of education of children of the officer) applies only to cases where the children are studying in class X or XII and appearing for attendant entrance tests thereafter and not for education of levels higher than class XII". The contention of the applicant is that the term 'education' had not been defined in the original order issued on 13.2.2006 (annexure A-11) and a clarification issued subsequently cannot be applied retrospectively to reject his request, which was made much before this clarification was issued. The applicant further submitted that payment of rent of Rs.1,03,500 was beyond his means and would cause extreme hardship to him and, therefore, his request could also be allowed as a case of genuine hardship.

4. In their reply, the respondents took a preliminary objection that the matter relates to the government accommodation located at Mumbai and the impugned order was passed by the Chief Commissioner of Income-tax, Mumbai on getting the communication from the CBDT, New Delhi and, therefore, the Jabalpur Bench of this Tribunal does not have jurisdiction to entertain and adjudicate upon the instant OA. Opposing this objection, the applicant, in his rejoinder submitted that the applicant is posted at Jabalpur and the impugned order was

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endorsed to him as Commissioner of Income-tax, Jabalpur. Hence, the Jabalpur Bench has jurisdiction over this matter. We agree with the submission made by the applicant as it is an undisputed fact that he is presently living in Jabalpur having joined at Jabalpur on 11.7.2005 and this OA was filed on 6.4.2006. This is permissible in terms of the provisions of Rule 6(1)(i) of the Central Administrative Tribunal (Procedure) Rules, 1987. Accordingly, we over-rule the preliminary objection raised by the respondents.

5. Regarding the impugned order, the contention of the respondents is that as per the existing orders (annexure A-11), it is within the powers of the CBDT to allow or disallow retention of government accommodation beyond 8 months, and by exercising this power, the CBDT has rejected the request of the applicant. The respondents have, however, not given any justification for rejecting the request of the applicant except stating that the applicant's "request has not been acceded by the Board in terms of the clarification issued vide letter dt.21.3.06".

6. We have heard the learned counsel of both the parties and have also gone through their pleadings.

7. In the rejoinder, the applicant has stated that he has vacated the accommodation on 18.5.2006 and as per the impugned order he had to be charged the licence fee at the fair market rent only with effect from 11.4.2006. A perusal of the impugned order confirms the submission of the applicant that he has already been allowed to retain the government accommodation up to 10.4.2006 as is clear from para 4 of the impugned order reproduced below:

"Accordingly, I have been directed to request you to vacate the flat immediately failing which you will have to pay the licence fee at the fair market rent prevailing as per CPWD order Section E -Revised rates at Rs.1,03,500/- per month which will be levied w.e.f. 11.4.2006".



8. It is further seen that the request of the applicant has been rejected on the ground that retention beyond 8 months of transfer on the ground of education of children is permissible only if the children are studying in class - X or class - XII. The respondents have not given any justification for this distinction between children studying in class X/XII and those in higher classes. Moreover, as submitted by the applicant, this clarification was issued much after the applicant had made the request for extension on the basis of the order that authorized the CBDT to consider request for retention beyond 8 months on grounds of education and genuine hardship on payment of four times the normal rent. The applicant has furnished documents to show that his sons were required to appear in the law examination scheduled in April-May, 2006. Since the applicant had already been allowed to retain the accommodation up to 28th February, 2006, it would certainly appear to be unreasonable not to allow retention at least till the examinations were over. The respondents have not denied that the retention beyond 8 months could have been allowed on the ground of education of children, but they have contended that the request had to be rejected only because the applicant's sons were not appearing in X or XII class examinations. For this no further justification has been given. Prima facie it does not appear to be a reasonable classification and to make any such distinction, when the examination was only a couple of months away is legally unsustainable, especially because it would have undoubtedly caused genuine hardship to the applicant and would have jeopardized academic career of his children if the applicant were required to vacate the accommodation on 1.3.2006 and shift to some other place while the children were busy in preparing for their examination. The applicant has already established his bona

fides by vacating the accommodation on 18.5.2006 i.e. within two days after the examination of his sons was over on 16.5.2006 despite the fact that he had requested for retention up to 30.6.2006.

9. It is very much clear that payment of rent of Rs.1,03,500/- for a month would have been beyond the means of a government servant drawing the total emolument of around Rs.40,000/- per month. Payment of such a high rent would have caused genuine hardship to the applicant. On this ground also, it was unreasonable on the part of the respondents to reject the request of the applicant for retention of accommodation for another two months or so.

10. From the impugned order, it is clear that the applicant was asked to pay fair market rent from 11.4.2006 implying that from 1.3.2006 to 10.4.2006 his retention of accommodation would be regularized in terms of the order dated 13.2.2006 i.e. on payment of four times the normal rent. In view of this, the only period that is left to be regularized is from 11.4.2006 to 17.5.2006, as the applicant vacated the accommodation on 18.5.2006. The applicant has submitted that in terms of the order dated 13.2.2006 (annexure A-11), he has no objection to paying four times the normal rent after 28.2.2006 as per rules and would be willing to pay the same rent till the vacation of the flat on 18.5.2006.

11. In the light of the above discussion, we hold that the distinction made by the respondents in the clarification dated 21.3.2006 (annexure A-12) between children studying in class X/XII and in higher classes for the purpose of permitting retention of accommodation is absolutely unreasonable and legally unsustainable. Accordingly, rejection of the request of the applicant on the ground that his children were not studying in class X/XII is also legally unsustainable. The impugned order is legally unsustainable also on the ground that it has been done on the basis



of a clarification which was issued after the request for retention was made.

12. In view of the above facts, we have no hesitation in quashing and setting aside the impugned orders dated 4.4.2006 and 24.3.2006 (annexures A-1 and A-13 respectively). Accordingly, we direct the respondents to regularize the retention of the government accommodation flat no. D-7, I.T.Colony, Peddar Road, Mumbai by the applicant on ground of education of children from 1.3.2006 to 18.5.2006 on payment of four times the normal rent in terms of order dated 13.2.2006 (annexure-A-11).

With these directions, the OA is allowed. No costs.

A.K. Gaur
(A.K. Gaur)
Judicial Member

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

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पृष्ठान्त सं ओ/न्या.....जबलपुर, दि.....

पत्तिनिधि अर्जो धारा:-

- (1) सदिय. उच्च न्यायालय नगर एनोसिएशन, जबलपुर
- (2) आवेदन नं./प्रीमती/पु.....के काउंसल
- (3) प्रत्यर्थी श्री/प्रीमती/पु.....के काउंसल
- (4) ग्रंथपाल, को.प.अ., जबलपुर अदालतघर
सूचना एवं आवश्यक कार्यवाही हेतु

रजिस्ट्रार

Issued
30/6-06

R. Tiwari
J.K. Mishra
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