

Central Administrative Tribunal
Jabalpur Bench

OA No.799/98

Jabalpur, this the 2nd day of September, 2005.

C O R A M

Hon'ble Mr.Madan Mohan, Judicial Member

J.P.Hillori
Son of Shri Mannoolal
Additional Commissioner of Income Tax (Appeals)
Jabalpur (M.P.) Applicant

(By advocate Ms.P.L.Shrivastava on behalf
of Smt.S.Menon)

Versus

1. Union of India through
Secretary
Ministry of Finance
New Delhi
2. Chief Commissioner of Income Tax
Bhopal.
3. Commissioner of Income Tax
Jabalpur.
4. Deputy Commissioner of Income Tax
Range-I, Indore. Respondents.

(By advocate Shri B.Da' Silva)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following
reliefs:

- (i) Quash the order dated 31.8.1998 Annexure A2.
- (ii) Direct the respondents not to penalize the applicant by
charging the penal/damage rent at exorbitantly high rates,
which are not applicable at Indore.



2. The brief facts of the case are that the applicant is Additional Commissioner, Income Tax (Appeals), Jabalpur holding additional charge of appeals of Indore, Bhopal and Raipur. The grievance of the applicant is that prior to his posting at Jabalpur, he was allotted an official accommodation at Indore for which an exorbitant rate of rent at the rate of Rs.13055/- per month is being levied from him with retrospective effect i.e. 25.12.1997 (Annexure A2). It is alleged in the OA that the standard rate of rent for the quarter No.E-2/7 at Indore is Rs.700/- per month and imposition of damage rent to the extent of Rs.13,055/ per month is arbitrary and illegal. The damage rate of Rs.95/- per square metre is applicable only in Delhi and not at Indore. The license issued to him on 6.6.95 to occupy the aforesaid quarter has not been cancelled and therefore, as per Government of India, Ministry of Urban Development (Director of Estate) OM dated 27th August 1987, damage rent is effective from only a prospective date. Challenging the action of the respondents in charging higher rate of rent for the quarter allotted to him at Indore, the applicant has filed this OA.

3. This OA was dismissed in default vide order dated 9th September 2003 and was restored by the Hon'ble High court vide order dated 30.6.2005 and the High Court directed the parties to be present before the Tribunal on 9.8.2005 when it was adjourned to 12.8.05. On 12.8.2005, none was present for applicant. Later on Ms.P.L.Shrivastava, learned counsel for the applicant appeared. At the request of the counsel, one week's time was given to her to file written arguments.

4. We have perused the written arguments submitted on behalf of the applicant in which it is mentioned that the applicant had submitted an application dated 27.11.1997 to the Chairman, Central Board of Direct Taxes about his hardships, detailing therein the protection to be conferred upon his children and aged mother. Further requests for retention were made on 24.3.1998 and 16.6.98. Another application-dated 9.7.98 was also submitted. Despite repeated requests for

retention of the aforesaid residential accommodation, respondents issued the impugned order dated 31.8.1998, levying damage rent @ Rs.13055/- per month from retrospective date i.e. with effect from 25.12.1997. No reasonable opportunity of hearing was granted to the applicant before issuance of the impugned order. The applicant also submitted a representation-dated 10.9.98 i.e. after passing the impugned order but it was not considered. The impugned order is passed on the basis of SR 317-B-11 (2) in Division 26-B which is pertaining to allotment of Government residences (General Pool in Delhi) Rules, 1963. Sub Clause (C) of SR 317-B-2 defines "Delhi" and further under the Foot Note, it has been clarified that the said rules in Division 26-B applies to Mumbai, Kolkata, Chandigarh, Faridabad, Chennai, Nagpur and Simla Pool of accommodation also with minor changes. In other words, it is not applicable to residences located either in the State of Madhya Pradesh or at Indore, while the impugned order is passed on the basis of the aforesaid orders, which is apparently illegal and is not applicable in the case of applicant. The said penal amount at the rate of Rs.13,055/- per month is not all recoverable from the applicant for the period from 25.12.97 to 18.11.99. Hence the OA deserves to be allowed.

5. Respondents in their reply contend that the impugned order dated 31.8.98 is issued as per the provisions contained in Rule 317-B of Supplementary Rules. The said rules are mandatory and when applying the same, the principles of natural justice are not attracted. The applicant has never applied for retention of the quarter. The applicant was holding the additional charge of Deputy Commissioner of Income Tax (Appeal) Indore upto 30.9.98. Prior to that he was posted at Jodhpur and not at Indore, as averred by him. He was allotted the quarter at Indore on 6.6.95. He was transferred to Jodhpur and not Jabalpur and was relieved on 24.10.97. The applicant could not have retained the quarter merely on the ground that government quarters were not available or allotted at Jodhpur or Jabalpur. An official can retain the government accommodation for a period of 2



months after transfer/relieving as per Rule 317(B) (11)(2) of the Supplementary Rules at normal license fee. The applicant had never preferred an application for further retention and therefore was in unauthorized occupation of the quarter. The allotment was effective only upto 24.12.97 the date on which the allotment automatically got cancelled. Moreover, in view of the aforesaid Supplementary Rules, there was no need to cancel the allotment. The applicant had addressed his application-dated 16.6.98 (Annexure A1) to Chief Commissioner of Income Tax, Bhopal while the Estate Officer is the Commissioner of Income Tax, Indore. The applicant was entitled to retain the quarter upto 24.12.97 and thereafter his allotment automatically stood cancelled. The impugned order does not suffer from any infirmity.

6. After hearing the learned counsel for respondents and on perusal of the written arguments and also perusal of the records, I find that the respondents have passed the impugned order on the basis of Swamy's News letter dated January 1998 Annexure R3. Firstly it is hardly legible and in this letter no specific rules etc. are mentioned while the applicant has filed the aforesaid SR 317-B (22) mentioned in Para 10 of the written arguments. I have perused the documents filed. It is about the allotment of government accommodation in Delhi (General Pool in Delhi) Rules, 1963. Respondents have contended that they have not received any representation of the applicant for retention of the said government accommodation while it is specifically mentioned in the written arguments on behalf of the applicant that he had submitted an application on 27.11.97 (Document I) requesting for retention of the government accommodation and another request was also made on 24.3.98 (Documents II) and he further requested vide application filed as Document III. Apart from these, after passing the impugned order dated 31st August 1998, he had also submitted a further representation 10.9.98 but the respondents did not consider any of the representations of the applicant by passing the impugned order or thereafter.



7. Considering all facts and circumstances of the case, I am of the considered opinion that the impugned order dated 31st August 1998 is liable to be quashed and set aside. I do so. Respondents are directed to consider and decide the matter within a period of three months from the date of receipt of a copy of this order by passing a speaking, reasoned and detailed order in view of the observations made above.

also in assistance with relevant rules.
The OA is disposed of as above. No costs.

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also
(Madan Mohan)
Judicial Member

aa.

पूजावन सं ओ/न्या.....जवलापुर, दि.....
चतिलिदि अचो सित:-

(1) सतिव, उन्ना जयराजरा नगर एरोविपुवन, जवलापुर

(2) आनंदक श्री/श्रीमती/शुके काउंसल

(3) पत्नी श्री/श्रीमती/शुके काउंसल

(4) नंदमाला, ओ.प.आ, जवलापुर जयराजरा
सचवा एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

S. Menon
6-9-05
6-9-05

Final
6-9-05