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# OPINION

The present opinion relates to the issue whether expenditure on repairs and renovations by the employer, in respect of an accommodation occupied by the employee, could be brought to tax as a perquisite in the hands of the employee. This opinion is being provided, because there are situations where the employer has to incur expenditure on repairs and renovations in respect of an accommodation leased for providing rent-free accommodation to the employee. The issue which arises in such a situation is whether the aforesaid expenditure could be taxed as a perquisite in the hands of the employee.

Recently, the Delhi High Court has rendered a very significant judgement on the aforesaid issue, in the case of *Scott R. Bayman Vs CIT [2012] 76 DTR 113 (Del)***.** The issue before the Delhi High Court in the aforesaid case was whether expenses incurred by the assessee's employer towards repairs and renovations of the leasehold residential accommodation occupied by him, could be brought to tax as a perquisite in the hands of the assessee-employee.

It was held by the High Court that the relevant provisions of rule 3 of the Income-Tax Rules, 1962 (the Rules), which elaborates various contingencies in relation to perquisite in respect of rent-free accommodation, rules out the intention of the Parliament to treat the expenses in relation to improvement, repairs or renovations, as falling within the meaning of "*perquisite*". Therefore, expenses incurred by the assessee's employer towards repairs and renovations of the leasehold residential accommodation occupied by him, cannot be included in his taxable income as a perquisite, particularly in the absence of any recital in the lease deed spelling out any obligation on the assessee-employee to carry out repairs and renovations.

Before we proceed to deal with the aforesaid judgement of Delhi High Court, it would be necessary to refer to the relevant provisions of the Income-Tax Act, 1961 (the Act). Section 17(2) provides inclusive definition of the term "*perquisite*". The relevant parts of section 17(2) of the Act, are reproduced as follows :

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***17. "Salary", "perquisite" and "profits in lieu of salary" defined.***

*For the purposes of sections 15 and 16 and of this section,—*

*(1)* ******

*(2) "perquisite" includes—*

*(i) the value of rent-free accommodation provided to the assessee by his employer;*

*(ii)* *****

*(iii)* *****

*(iv) any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee*

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In the present context, a reference to rule 3 of the Rules is necessary, because rule 3 deals with valuation of perquisites. In the present context, rule 3(1) is relevant, which is reproduced as follows :

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***3. Valuation of perquisites***

*For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the assessee (hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:—*

*(1) The value of residential accommodation provided by the employer during the previous year shall be determined on the basis provided in the Table below.*

*TABLE I*

| *Sl. No.* | *Circumstances* | *Where accommodation is unfurnished* | *Where accommodation is furnished* |
|---|---|---|---|
| *(1)* | *(2)* | *(3)* | *(4)* |
| *(2)* | *Where the accommodation is provided by any other employer and—* | | |
| | *(a) where the accommodation is owned by the employer, or* | *(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census;*<br><br>*(ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census;*<br><br>*(iii) 7.5% of salary in other areas,*<br><br>*in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.* | *The value of perquisites as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.* |
| | *(b) where the accommodation is taken on lease or rent by the employer.* | *Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.* | *The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, by the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.* |

In the present context, *Explanation (i)* to rule 3 of the Rules is also relevant, because it defines the term "*accommodation*". The aforesaid *Explanation (i)* is reproduced as follows :

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*Explanation.—For the purposes of this rule—*

*(i) "accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure.*

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We may now refer to the aforesaid judgement of Delhi High Court in detail.

The brief facts of the aforesaid case are that the assessee was the President and CEO of M/s GE International Operations Corpn. Inc. He had filed his return of income on 30.6.1994. The Assessing Officer (AO), during the course of assessment proceedings, observed that for the year under consideration, the assessee's employer had incurred expenses of Rs. 50 lakhs towards repairs and renovations of the residential accommodation occupied by him. The AO held that the amount of Rs.50 lakhs, was a perquisite in the hands of the assessee by virtue of section 17(2)(iv) of the Act.

The reasoning of the AO was that the expenses incurred by the employer were to suit the requirements of the employee and that it had nothing to do with the performance of his duties for his office. The order of assessment rejected the contention that the perquisite value, if any, could be calculated only on the basis of rule 3 of the Rules. On appeal, the CIT(A) and the Tribunal rejected the appeal of the assessee-employee.

The aforesaid order of the Tribunal was, thereafter, challenged before Delhi High Court. After detailed discussion of all the relevant aspects, it was held that the express provision of rule 3 of the Valuation Rules, which elaborates various contingencies in relation to the perquisite of rent-free accommodation, rules out the intention of Parliament to treat the expenditure in relation to improvement, repairs or renovations, as falling within the meaning of "*perquisite*".

It was further held that as regards section 17(2)(iv), the argument on behalf of the Revenue that repairs and renovation expenses constituted an obligation of the assessee-employee, which was borne by his employer, is meritless. The material extracts of the lease deed nowhere spell out any obligation to carry out repairs and renovations. Therefore, that provision cannot be made applicable.

In the present context, a reference has also been made to the judgement of the Supreme Court in the case of *CIT Vs L.W. Russel [1964] 53 ITR 91 (SC).* It was, *inter alia*, held in this case that contributions made by an employer to provide pensionary or deferred annuity benefits to employees,

cannot be taxed in the hands of the employees under section 7(1) of the Indian Income-Tax Act, 1922, **unless a vested interest therein accrues to the employees.**

In the present context, a reference may also be made to the judgement of Madras High Court in the case of *CIT Vs K.S. Sundaram [1999] 239 ITR 851 (Mad).* It was held in this case that the rule prescribing mode of computation of perquisite value is mandatory, whether the accommodation is owned by the employer or taken on lease. The actual rent paid by the employer for the accommodation cannot be taken as perquisite value. The aforesaid judgement of Madras High Court was, later on, affirmed by the Supreme Court in the case *of K.S. Sundaram Vs CIT [2001] 251 ITR 781 (SC).* It is, therefore, clearly established that for the valuation of perquisite in respect of rent-free accommodation provided by the employer to the employee, only the provisions of rule 3 of the Rules are relevant and accordingly, any other consideration relating thereto, would be irrelevant.

**Conclusion**

In the light of the aforesaid judgement in *76 DTR 113 (Del)* and other legal precedents referred to, in the preceding paragraphs, the expenditure incurred by the employer towards the repairs and renovations of leasehold accommodation occupied by the employee, cannot be included in the taxable income of the employee, as a perquisite.

The same would be the position if the aforesaid accommodation is owned by the employer.

In view of the aforesaid reasons, the employers may undertake repairs and renovations of the leasehold residential accommodation provided by them to their senior employees and in such a case, the employees concerned, will not be burdened with additional tax liability in respect of the aforesaid expenditure on repairs and renovations in respect of the rent-free accommodation provided to the employee.

Place : Pune

Date : 17.10.2012 ( S.K. Tyagi )

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