

## **Reimbursement of Re-location expenses: A Perquisite**

266 ITR (Jour.) p.25 (Part – 7)

By S.K.  
Tyagi

Recently, I was approached by a multi-national company for an opinion regarding tax-treatment of the expenses reimbursed by the company on the re-location of an employee from his present location to the place of employment with the company. Of late, a number of multi-national companies and other big Indian companies have, by way of incentive, have started to make reimbursement of expenses incurred by an employee on re-location of his residence, etc. for the purpose of his new employment. These companies have been taking a number of new employees on their rolls and in the competitive environment prevailing in the job market of certain highly skilled employees, such employees expect that all the expenses incurred by them on the shifting of their families and house-hold from their earlier place of residence to the place of new employment must be reimbursed by the employer. The main queries raised in this regard are in respect of the tax-treatment of the following items of expenditure-

- (i) Reimbursement of expenditure incurred by the employee on shifting of his house-hold articles from the present place of residence to the place of new employment.
- (ii) Reimbursement of expenditure on the travel of the employee and the members of his family from the present place of residence to the place of new employment.
- (iii) Reimbursement of expenses for stay in a hotel, etc. during the initial period of 15 days on joining the new employment, and
- (iv) Daily fixed allowance for meals, etc. during the initial period of 15 days on joining the new employment.

In order to answer the aforesaid queries, it would be necessary to examine the relevant provisions of the Income-Tax Act, 1961, and the Income-Tax Rules, 1962. Besides, the case-law, relevant to the issues under consideration will also be cited, whenever necessary. The same are dealt with as follows:-

### **1. Section 10(14) (i) of the IT Act, 1961**

The heading of Section 10 is “Incomes not included in total income”. For the sake of convenience Section 10 (14) (i) is reproduced as follows:-

-----

#### **Section 10**

*In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-*

**(14) (i)**

*Any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of Section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as maybe prescribed, to the extent to which such expenses are actually incurred for that purpose.*

-----  
-----

From the aforesaid provisions it is clear that any special allowance or benefit specifically granted to meet expenses incurred in the performance of the duties of an office or an employment of profit, would be exempt. It would also be clear that such special allowance or benefit should not be in the nature of a perquisite under Section 17(2) of the Income-tax Act. Such special allowance or benefit is regarded as 'income' by virtue of the provisions of Section 2(24) (iii a) of the Act.

In this context, it may be clarified that the word 'perquisite' as contemplated under Section 17(2) of the I.T. Act, does not include any payment to the employee either by cash or cheque. A perquisite is always a benefit in kind. Therefore, the special allowance or benefit, as contemplated under section 10(14) (i), will not fall within the mischief of Section 17 (2)(iii)(c) or Section 17 (2)(iv) of the I.T. Act and accordingly, the reimbursement of the expenses in question, will not fall within the definition of 'perquisite' under Section 17(2) of the I.T. Act.

**In this context, it is enough, if a person is holding an office and for the purpose of performing the duties associated with his office, he is granted an allowance or benefit specifically to meet the expenses.** For this proposition reliance is placed on the judgement in the case of *CIT Vs. Maddi Sudarsanam [1988] 174 ITR 659 (AP)*. The relevant observations of the High Court are to be found on pp.661 and 662 of the Report. The same are reproduced as follows-

*Section 10 (14) does not use the expression 'office of profit". The expression used is "office or employment of profit". The expression "of profit" qualifies only "employment", and, in our opinion, does not qualify "office". It is enough if a person is holding an office and for the purpose of performing the duties associated with his office, he is granted an allowance or benefit specifically to meet the expenses.*

-----  
-

Therefore, any expenditure incurred for the purpose of performing the duties associated with the office or in other words, for the purpose of employment, would qualify for exemption under Section 10 (14) (i) of the Income-tax Act. It is also clear that when an employee shifts his residence and family in

order to join his new employment, the expenditure in respect thereof, will have to be treated to have been incurred for the purpose of employment.

In any case, as per Rule 2BB(1)(a) and 2BB(1)(b), it is clear that any allowance or sum paid to the employee in connection with his transfer, is covered under Rule 2BB (1). Besides, as per Explanation to Rule 2BB(1), the term ‘allowance granted to meet the cost of travel on transfer’, includes any sum paid in connection with **transfer, packing and transportation of personal effects on such transfer**. Therefore, the allowance or sum paid to meet the cost in connection with the **transfer** of the employee, will also be entitled to exemption under Section 10 (14) (i) of the I.T. Act.

It may be stated here that Section 10 (14) is an **exemption provision**. Besides, Section 10 (14) is also a **beneficial provision** for the salaried employees.

It is a settled position in law that an exemption provision has to be liberally construed. Further it is also a settled position in law that a beneficial provision has also to be liberally construed. In the light of the aforesaid reasons, it may be safely concluded that if an employee incurs any expenditure on shifting from other station to the place of his employment, such expenditure has to be treated to have been incurred for the purpose of his employment. Therefore, the reimbursement of the aforesaid expenditure will fall within the exemption provided under Section 10 (14) (i) of the Income-Tax Act.

## 2. Rule 2BB of the Income-Tax Rules, 1962

Rule 2BB prescribes allowances for the purposes of Section 10 (14) of the Income-Tax Act. For our purpose Rule 2BB (1) is relevant. For the sake of ready reference, the same is reproduced as follows-

### **Prescribed allowances for the purposes of clause (14) of section 10.**

**2BB.** (1) *For the purposes of sub-clause (i) of clause (14) of section 10, prescribed allowances, by whatever name called, shall be the following, namely :—*

- (a) *any allowance granted to meet the **cost of travel** on tour or **on transfer**;*
- (b) *any allowance, whether, granted on tour or **for the period of journey in connection with transfer**, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty;*
- (c) *any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit :*  
**Provided** *that free conveyance is not provided by the employer;*
- (d) *any allowance granted to meet the expenditure incurred on a helper where such helper is engaged for the performance of the duties of an office or employment of profit;*

(e) any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions;

(f) any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit.

*Explanation :* For the purpose of clause (a), “**allowance granted to meet the cost of travel on transfer**” includes any sum paid in connection with transfer, packing and transportation of personal effects on such transfer. (Emphasis added)

-----  
-----  
From the aforesaid provisions, it is clear that as per Rule 2BB(1) (a) any allowance granted to meet the cost of travel on tour or **on transfer**, is one of the prescribed allowances. As per Rule 2BB(1)(b), any allowance, whether, granted on tour or **for the period of journey in connection with transfer**, is also one of the prescribed allowances. Further, as per Explanation to Rule 2BB(1) for the purpose of aforesaid clause (a), ‘allowance granted to meet the cost of travel **on transfer**’, includes any sum paid **in connection with transfer, packing and transportation of personal effects on such transfer**.

Therefore, in view of the aforesaid provisions of Rule 2BB(1) r.w. Explanation thereto, it is clear that the expenses incurred **in connection with the transfer of the employees** from one station to another are exempt under the provisions of Section 10 (14) (i) r.w. Rule 2BB(1).

As the term ‘allowance granted to meet the cost of travel on transfer’, includes, any sum paid in connection with transfer, packing and transportation of personal effects on such transfer, as per Explanation to Rule 2BB (1), it should also include the **cost of travel of the family of the employee**. Besides, as per Sr.No. (3) of Table – I of Rule 3(1), expenditure on the provision of accommodation in a hotel for initial 15 days **on transfer**, is not treated as a perquisite. Obviously, the accommodation in the hotel is meant not only for the employee but also his family. It, therefore, implies that any allowance or sum paid by way of cost of travel of the family of the employee on such transfer, will also be covered under Rule 2BB(1) of the I.T. Rules.

The meaning of the word ‘family’ may be taken from the Explanation to Section 10(5) of the Act, in connection with Leave Travel Concession. As per the aforesaid Explanation ‘family’ means-

- (i) the spouse and children of the individual, and
- (ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

As already pointed out earlier Section 10(14) is an exemption provision and also a beneficial provision and, therefore, the same is required to be construed liberally. In this view of the matter, the

expenditure incurred by an employee in connection with his transfer from one station to the place of his employment, will qualify for the aforesaid exemption even if-

- (i) the employee in question joins the present employment after relinquishing his earlier employment, and
- (ii) the employee in question joins the employment as a new employee.

### 3. Section 17(3) (iii) of the IT Act, 1961

For the sake of ready reference Section 17 (3) (iii) is reproduced as follows-

-----  
**Section 17(3)** – “Profits in lieu of salary” includes

(iii) any amount due to or received, whether in lump sum or otherwise, by any assessee from any person—

(A) before his joining any employment with that person; or

(B) after cessation of his employment with that person.

-----

From the aforesaid provisions of Section 17(3)(iii) of the I.T. Act, it is clear that even the amount due or received before joining any employment or after leaving the employment; is treated as a part of salary and accordingly, liable to tax.

However, as the aforesaid reimbursement of expenses will be made after the employee joins the employment, the same will not be hit by the provisions of Section 17(3) (iii) (A) of the I.T. Act. On the other hand, the same would be entitled to exemption under Section 10(14)(i) of the I.T. Act.

### 5. Stay in a hotel for the initial period of 15 days on joining the employment -Rule 3(1)

In this connection, Sr.No.(3) of Table I of Rule 3(1) of the I.T. Rules, 1962, is relevant. For the sake of ready reference, the same is reproduced as follows-

-----

**TABLE - I**

Sl. No.	Circumstances	Where the accommodation is unfurnished	Where the accommodation is furnished
(1)	(2)	(3)	(4)
(3)	Where the accommodation is provided by the employer specified in Sl. No. (1) or (2) above in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his	Not applicable	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by

<i>transfer from one place to another)</i>		<i>the rent, if any, actually paid or payable by the employee:</i>
--	--	--

-----

**Thus, where the accommodation is provided by the employer (Government or other employer) in a hotel, the value of the accommodation shall be-**

- (i) 24% of salary paid or payable for the previous year, or;
- (ii) the actual charges paid or payable to such hotel;

whichever is lower, for the period during which such accommodation is provided.

However, if the employee pays any rent, the value so determined shall be reduced by the rent, actually paid or payable by the employee.

**In respect of hotel accommodation the expenses payable to the hotel should also include boarding charges.**

In respect of a general accommodation provided by the employer the perquisite value in respect thereof, is computed at 10% or 7.5% of the salary of the employee. However, in respect of hotel accommodation, provided by the employer, the perquisite value is computed at 24% of the salary paid or payable for the previous year. It, therefore, implies that the hotel expenses as contemplated in Table – I of Rule 3(1), must include not only lodging but also boarding charges.

**No perquisite value even if accommodation is provided in a hotel; for the initial period of 15 days on joining the employment**

There will be no perquisite value for the accommodation provided in a hotel, if the following two conditions are fulfilled.

- (a) Such accommodation is provided for a period not exceeding 15 days; and
- (b) It has been provided on **the transfer of the employee from one place to another.**

From the aforesaid provisions, it may be seen that there are no conditions attached in respect of the payment to be made to the hotel. It may, therefore, be safely concluded that for the initial period of 15 days any payment made to the hotel by the employee or reimbursement of such expenditure to the employee, will not be treated as perquisites and such payment may include both lodging and boarding expenses.

## **6. Interpretation of the word ‘transfer’**

The word “transfer” as used in Rule 2BB(1) and Sr.No.(3) of Table – I of Rule 3 (1), has not been defined anywhere either in the Income-Tax Act, or Income-Tax Rules. Therefore, as per para 10 of the Preamble to the General Clauses Act, 1897, where the definition of a word has not been given, it must be construed in its popular sense, if it is a word of every day use. ‘Popular sense’ means that sense

which people are conversant with the subject-matter with which the statute is dealing, would attribute to it. The expression 'popular sense', is synonymous with 'common parlance'.

As per the judgement of the Apex Court in the case of *State of Orissa Vs. Titaghur Mills Co. Ltd.*, AIR 1985 S.C. 1293, an effort should be made to take aid of dictionaries to ascertain the meaning of a word in common parlance but nevertheless to bear in mind to select a particular meaning which is relevant to the context in which the Court has to interpret the word.

For the aforesaid purpose, we may look at the meaning of the word 'transfer' as per the Concise Oxford Dictionary – Ninth Edition. The meaning of the word 'transfer' is given on page 1481. Keeping in view the present context, the meaning of the word 'transfer' is – change from one station to another. Thus, the meaning of the word 'transfer' as used in Rule 2BB (1) and Sr.No.(3) of Table I of Rule 3 (1), would be simplicitor. – **change from one station to another.**

As the word 'transfer', as used in Rule 2BB(1), Explanation to Rule 2BB(1) and Sr.No.(3) of Table-I of Rule 3(1), is not qualified by any condition, the same will apply to all the following situations-

- (i) where an employee goes on a transfer from one station to another under the same employment,
- (ii) where an employee joins his present employment after leaving his earlier employment and for that purpose he moves from his earlier station to the place of his present employment, and
- (iii) where a fresh employee joins his present employment and for that purpose he has to move from his present place of residence to the place of his employment.

In the light of the aforesaid reasons, reimbursement of expenditure made to a new employee for the cost of travel on transfer, daily charges for the period of journey in connection with transfer, packing and transportation charges in respect of personal effects on such transfer, will be treated as exempt, under Section 10 (14) (i) r.w. Rule 2BB(1).

## **7. Exemption provision and beneficial provision have got to be liberally construed**

As already pointed out Section 10(14) is an **exemption provision**. Besides, it is also a **beneficial provision** for the salaried employees.

As per the judgement of the Gujarat High Court, in the case of *CIT Vs. Gujarat Aluminium Extrusions Pvt. Ltd.* [2003] 263 ITR 453 (Guj.), the provision for exemption or relief should be construed liberally and in favour of the assessee.

Besides, it is a settled position in law that a beneficial provision has to be liberally construed. For this proposition, reliance is placed on following judgements-

- (i) *P. Nagindas & Others Vs. B.R. Adwalpalkar [1996] 218 ITR 392 (Guj.)*
- (ii) *J.K. Abdul Jabbar Vs. CIT [1999] 237 ITR 389 (Mad.)*
- (iii) *Sardar Harpreet Singh Vs. CIT [1991] 187 ITR 679 (All.)*
- (iv) *CIT Vs. Smt.R. Bharathi [1999] 240 ITR 697 (Mad.)*
- (v) *A.S. Mani Vs. Union of India and Others [2003] 264 ITR 5 (Karn.)*

## 8. Lunch allowance Vs. Food and Beverages

Any lunch allowance received by an employee shall be fully taxable. On the other hand in the following cases there shall be no perquisite value-

- (i) where free meals are provided by the employer during office hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints if the value thereof in either case is upto Rs.50/- per meal, or
- (ii) to tea or snacks provided during office hours, or to free meals during working hours provided in a remote area or an off-shore installation.

## 9. Whether the reimbursement of re-location expenses qualifies for the exemption provided in

### Section 10 (14) (i) of the IT Act

A doubt may be raised as to whether the reimbursement of re-location expenses is covered by the exemption provided under Section 10(14) (i) of the IT. Act. This doubt may arise because Section 10(14) (i) exempts from income-tax, any special allowance or benefit, **not being in the nature of perquisite within the meaning of clause (2) of Section 17 of the Act.**

Therefore, if the reimbursement of re-location expenses falls within the definition of 'perquisite' as provided under Section 17 (2) of the Act, then the same will not be entitled to the exemption under Section 10(14) (i).

In this context, it may be stated that the word 'perquisite' has not been defined anywhere under the IT Act or IT Rules. One has to take the aid of Dictionaries in order to understand the meaning of a word not defined in the relevant statute – *State of Orissa Vs. Titaghur Mills Co. Ltd., AIR 1985 S.C. 1293*. In the Law Lexicon, Vol.2 by T.P. Mukherjee, the word 'perquisite' has been defined on page 317 as – 'perquisite has a known normal meaning, namely, a personal advance which would not apply to a mere reimbursement of necessary disbursements.'

Besides, as per the Law Lexicon by P.R. Ayier, the word 'perquisite' is defined on page 1443 as – 'perquisite means personal advance and includes the use of a car given to an employee in return for a

wage reduction'. Another definition in the aforesaid Law Lexicon is – 'it means something gained by a place or office and the regular salary or fee'.

In this connection, to clear any doubt on this issue, we may refer to CBDT's Circular No.15/2001, dt. 12.12.2001, which also deals with evaluation of perquisites under Rule 3 of the Income-Tax Rules, 1962. In this context, the relevant part of the aforesaid Circular is reproduced as follows:-

-----  
*It is pertinent to mention that benefits specifically exempt under Sections 10(13A), 10(5), 10(14), 17, etc., would continue to be exempt. These include benefits like travel on tour and transfer, leave travel, daily allowance to meet tour expenses as prescribed, medical facilities, subject to conditions.*  
 -----

-----  
 In view of the aforesaid reasons, it is abundantly clear that the benefits specifically exempt under Sections 10(13A), 10(5), 10(14), 17, etc. would continue to be exempt notwithstanding anything contained in Section 17(2) of the IT Act, 1961.

## 9. Conclusion

In the light of the discussion, in earlier paras, the aforesaid queries may be answered as follows:-

- (i) The reimbursement of expenditure on packing and transportation of personal effects and household articles from the other station to the place of employment, incurred by the concerned new employee, will be exempt from income-tax under Section 10(14) (i) r.w. Rule 2BB (1).
- (ii) The cost of travel of the employee in connection with the re-location/transfer from the earlier place of residence to the place of employment, will be exempt under section 10(14) (i) r.w. Rule 2BB(1).  
 Besides, as explained already, the cost of travel of the family of the employee on such re-location / transfer will also be exempt under section 10 (14)(i) r.w. Rule 2BB(1).
- (iii) The reimbursement of expenditure for stay in a hotel for initial 15 days, on joining the new employment, will also be exempt from income-tax.
- (iv) Any allowance for meals, being payment by cash/cheque will be liable to tax. However, if the same is reimbursed as part of the lodging and boarding charges for the initial period of 15 days in a hotel, then the same would not be liable to tax.

An employer and a new employee may plan the re-location etc. of such an employee, in the light of the aforesaid guidelines.

M.Sc., LL.B., **Advocate**  
Ex-Indian Revenue Service  
**Income-Tax Advisor**

Fax : (020) 2612 1131  
Residence : (020) 2668 2032  
: (020) 2668 2444  
E-mail : [sktyagidt@vsnl.com](mailto:sktyagidt@vsnl.com)

Gurudatta Avenue  
Popular Heights Road  
Koregaon Park  
PUNE - 411 001

---