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IN THE HIGH COURT OF DELHI

ITA No.373 OF 2003

Judgment Reserved on : February 01, 2005

Date of Decision: February 2<sup>nd</sup>, 2005

V.V.BURMAN

... Petitioner

Through

Mr. Pankaj Jain with Mr. Tarun Diwan, Adv.

Versus

COMMISSIONER OF INCOME TAX ... Respondent

Through

Ms. Prem Lata Bansal with Mr. Ajay Jha, Adv.

CORAM:

HON'BLE MR. JUSTICE SWATANTER KUMAR

HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not? *No*
3. Whether the judgment should be referred in the Digest?

SWATANTER KUMAR, J.

1. The assessee has preferred the present appeal under section 260A of the Income-tax Act for the assessment year 1994-95 against an order dated 13.5.2002 alleged to have been received by the assessee on 23.6.2003 vide which the Tribunal directed the Assessing Officer to



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decide the issue in light of the decision taken by the Tribunal for the assessment year 1992-93.

2. The facts as they emerged from the record are that the assessee are whole time Director of M/s Dabur India Limited derived income from the salary, dividends, interest, capital gain, etc. of the said company and was also allotted a residential house located at 43A Prithviraj Road, New Delhi. The house was taken on rent for a sum of Rs.7,000/- per month from M/s Monica Burman. The major portion of the property was given at a concessional rate to the assessee. The other part of the house was given on lease to M/s Inventure India B.V. The assessee had not declared any perquisites value in respect of this property in his income tax returns.

3. During the assessment proceedings, the Assessing Officer came to know that the rental value of the property as assessed by the Municipal Corporation of Delhi was Rs. 13,42,177/-. The Assessing Officer treated the sum as fair rental value and deducted therefrom 50% of the salary and the amount of Rs.27,000/- paid by the assessee therefore remanding amount of Rs.11,55,157/- was computed by the A.O. as perquisites value of the concessional accommodation and added to the taxable income of the assessee.



4. Against this order of the Assessing Officer an appeal was preferred by the assessee before the Appellate Authority. The submission on behalf of the assessee was that keeping in view the instruction No.1099 dated 20.9.1977 the criteria to be followed for determining the perquisites value in respect of the premises to be taken on rent by the company it was stated that the value would come to Rs. 36,231/- only. After noticing the said circular as well as the judgments in the case of Radha Devi Dalmia Vs. CIT, 125 ITR 134, the CIT (Appeals) accepted the perquisites value of the property computed at the above mentioned amount and disposed of the appeal accordingly. The Revenue aggrieved from the said order of the CIT (Appeals) preferred an appeal before the Income-tax Appellate Tribunal for the years 1993-94 and 1994-95. Both these appeals filed by the Revenue were dismissed and with the direction as already noticed to the Assessing Officer to proceed with the matter in terms of the order of the Tribunal in relation to the assessment year 1992-93. The present appeal has been preferred by the assessee has been directed against the order relating to the year 1984-85. The contention raised before us on behalf of the assessee is that there is total misapplication of law by the Tribunal as such the order of the Tribunal is liable to be set aside and that the present appeal raises substantial question of law. On the other hand the learned counsel appearing for the Respondent department while



relying upon the judgment in the case of Hindustan Aeronautics Ltd., Vs. Commissioner of Income-Tax, 243 ITR 808 and CIT VS. K.S.SUNDARAM, 251 ITR 781 (SC) contended that the present appeal deserves to be dismissed and in any case no prejudice has been caused to the assessee.

5. The argument raised before us do not raise any serious controversy of law or otherwise inasmuch as in the case of K.S.SUNDARAM (Supra). The Madras High Court in CIT VS. K.S.SUNDARAM, 239 ITR 851 (MAD) had clearly enunciated the principles in regard to application of Rule 3 (a)(iii) has an application of such premises or not and it held as under :-

“The object of the rule is to determine the value of the perquisite in all situations. It is an immaterial consideration whether the building was owned by the employer or taken on rent by the employer for the proper application of rule 3 of the Income tax Rules, and in our view in both the situations, rule 3 (a)(iii) apply as there are no limiting expressions found in rule 3 to make it applicable only in the case of a property, let out by an employer to its employee of the property owned by the employer and in the absence of any restriction found in rule 3, we are of the opinion that the provisions of rule 3 would cover both the situations and rule 3 has strictly to be followed in determining the value of the perquisite.

It is no doubt true that the application of rule 3 of the Income tax Rules may cause undue hardship in certain cases to the employee assessee



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as by the process of evaluation of the value of the perquisite in the manner provided under rule 3 the ultimate tax liability on the employee may exceed the total amount of salary of the employee. In our opinion, the hardship cannot prevent the operation of the rule. There is an oft-quoted observation that income tax and logic are strangers. We cannot construe the rule in such a manner which prevents its application and irrespective of the hardship, the provisions of the rule should be applied and if its application results in undue hardship, it is for the Board to intervene by suitable modification in the rule, and this court, as a court of construction can not hold otherwise."

6. The above principles settled by the Madras High Court was approved by the Supreme Court in CIT VS. K.S.SUNDARAM, 251 ITR 781 (SC) and their Lordships of the Supreme Court held as under:-

"We have heard learned counsel for the appellant and read the judgment and order under challenge. We have also read the rule, which the High Court (See 1999) 239 ITR 851 (Mad), has construed. In our view, the judgment of the High Court is unexceptionable."

7. From the above consistent view taken, it is clear that the argument raised on behalf of the assessee in regard to misapplication of law to the facts of the present case is without any merit. Furthermore, vide the impugned order has restored the matter to the file of the Assessing Officer for its disposal and decision in accordance with the decision of the Tribunal for the assessment year 1992-93. It is not in



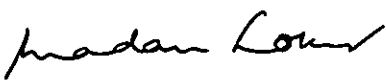
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dispute before us that the proceedings in relation to the assessment year 1992-93 are in progress and the said order has not been set aside by the jurisdictional High Court. As a principle of law, the matter is covered by the judgment of the Supreme Court and for its computation and assessment in accordance with rules the matter has been remanded to the Assessing Officer. Thus, we see no error in the order of the Tribunal which can give rise to any substantial question of law in the present case.

8. For the reasons afore-stated, we find no merit in this appeal and the same is dismissed while leaving the parties to bear their own costs.

  
(SWATANTER KUMAR)  
JUDGE

  
(MADAN B. LOKUR)  
JUDGE

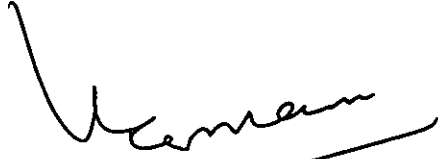
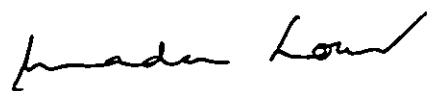
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- R.A.No. 113/05 for review of order dt 3-2-05.
- C.M.No. 5728/05 on behalf of Appellant U/s 5 of the Limitation Act 21w sec. 151 CPC for condonation of delay.





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Sr. No.	Date	Orders
		<p>(SC) was passed without taking note of the instructions dated 20<sup>th</sup> September 1977. As such the judgment of the Supreme Court would be per incuriam and could not have been followed by us.</p> <p>It has also been pointed out that on correct application of law we could have taken a different view than the one which has been expressed by us in the judgment under review.</p> <p>Both these grounds are beyond the purview and scope of Section 226 of the Code of Civil Procedure. The jurisdiction of review cannot be invoked on the ground that the Court could have taken a different view than the one expressed in the judgment. Further more the principle of law has been enunciated by the Supreme Court which we have followed in the judgment and it is not for us to examine the correctness and otherwise of the judgment passed by the Apex Court. We find no merit in the application.</p> <p>Dismissed.</p> <p style="text-align: right;"> <b>SWATANTER KUMAR, J</b></p> <p style="text-align: right;"> <b>MADAN B. LOKUR, J</b></p> <p><b>APRIL 26, 2005</b> rkr</p>