* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ ITA No . 8683/2007

Dated : 8th September, 2009

SHIPRA SRIVASTAVA & ANR. ...Appellants
Through: Mr. O.S. Bajpai, Sr. Advocate,
Mr. V.N. Jha, Mr. B.K. Singh, Advocates.

VERSUS

ASSTT. COMMISSIONER OF INCOME TAX,
CIRCLE-41(1), ROOM NO. 306 .Respondent
Through: Mr. Sanjeev Sabharwal, Advocate

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the Digest?

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VALMIKI J.MEHTA, J

1. The present writ petition has been filed by the petitioners, who are husband and wife, and who are Doctors working in Escorts Heart Institute and Research Centre Ltd. (for short "EHIRCL"). The facts of the case are that the petitioners/assessees filed a return of income for the assessment year 2005-2006 on 18.11.2005 and which was duly processed under Section 143(1) of the Income Tax Act, 1961. The petitioners were thereafter on 19.2.2007 issued notices under Section 147/148 of the Act.

On request of the petitioners the reasons for issuing of the notices und Sections 147/148 were supplied and which are as under:-

"Reasons for Reopening the Assessment

1.	Name of the assessee	:	Dr. Mrs. Shipra Srivastava
2.	PAN No.	:	AGZPS3647Q
3.	Asstt. Year	:	2005-06
4.	Address	:	A-13, EHIRC Residential EHIRC, Okhla Road, N. Delhi:-110025

Reasons for Reopening

Returns for A.Y. 2005-06 was furnished on 18.11.05 declaring total income of Rs.5,40,990/-. This has been processed u/s 143(1).

1. The assessee is a doctor in Escorts Heart Institute and Research Centre (EHIRC), popularly known as Escorts Hospital. From the address given by the assessee on the return of income and the T.D.S. Certificate (F.No.16) issued by the Employer, it is seen that the assessee is occupying rent free accommodation given by his employer i.e. "A-13, EHIRC Residential Tower, Okhla Road, New Delhi". The value of perquisites on account of rent free unfurnished accommodation computed by the employer as per details on record is Rs.27,000/-. As per Rule-3 of Income Tax Rules, 1962, the value for rent free unfurnished accommodation should be computed be @ 10% of salary & hence the value of housing perquisites should have been taken by the assessee at Rs.66,834/- (Her gross salary during the year was Rs.6,68,344/-) instead of Rs.27000/-, leading to under disclosure of income to the tune of Rs.39,834/-.

2. In her computation of income statement, the assessee as well as her husband have claimed loss of Rs.72815/- each under the head "Income from House Property" on a/c of interest on housing loan. No supporting certificate issued by the banker in support of claim of interest (although such certificate is mandatorily to be furnished as per 3rd proviso to section 24(b) before any deduction under the said sub-section is allowed has been attached. Even if presuming that Possession of the property stands taken over, the ALV of the same

should have been declared for assessment purposes as per section 23 of the I.T.Act, as the assessee, is occupying accommodation in the hospital premises provided by his employer. The interest claim of the assessee as such is wrong claim either fully or at least partly because the same has to be reduced from the Annual Letting Value (ALV) of the property.

3. In view of the above facts I have reasons to believe that the income chargeable to tax in the case of the assessee as discussed above, has escaped amendment within the meaning of S. 147 of the I.T. Act 1961 for A.Y. 2005-06.

4. Issue notice u/s 148 of the I.T. Act.

(PREM RAJ)

ASSTT. COMMISSIONER OF INCOME TAX

Circle-41, ND"

2. There are therefore two reasons which were given for reopening of the assessment. Firstly, that the petitioners have wrongly valued perquisite on account of rent free accommodation provided by the employers of the petitioners. According to the Assessing Officer whereas the value of this perquisite should have been 10% of the salary of the petitioners fees Rs. 66,834/- for Dr.(Ms.) Shipra Srivastava and Rs. 1,63,933/- for Dr. Sandeep Srivastava, but the assessee had valued the perquisite only at Rs. 27,000/-. The second reason for reopening of the assessment was that the annual letting value of the house property should have been declared for assessment purposes as the assessee had made a claim of interest expenditure on the housing loan taken for the property.

3. Before us Mr. O.S. Bajpai, the senior counsel appearing for tl petitioners has vehemently contended that the notices in question are clearly misconceived and are simply for harassing the petitioners who are professionals. The counsel has contended that the reasons which have been given for reopening of the assessment do not show that any new material has come to light for reopening of the assessment or that on the reasons stated there can be said to be that the officer had 'reasons to believe' for initiating reassessment. So far as the issue of incorrect valuation of the perquisite of the rent free accommodation provided by the employer, the counsel has contended that there is no material before the officer for holding that the assessee was occupying rent free accommodation given by his employer at A-13, EHIRC, Residential Tower, Okhla Road, New Delhi inasmuch as in fact and reality both the assessees had shifted from this accommodation way back in August 2001 when the petitioners moved into their own accommodation at Shipra Sun City. In fact thereafter the assesses were no longer in Delhi from August 2003 as they were posted by their employers to Raipur, Madhya Pradesh and from where they came to Delhi only on 30.6.2007. The senior counsel contended that it is not understood as to how the officer has taken the EHIRC residential tower address as having been supplied to the assessee as rent free accommodation by his employer as the return did

not disclose this as a perquisite, and whereas in fact along with the retu a TDS form was filed showing perquisite at Rs. 27,000/- on account of the House Rent Allowances (HRA) provided to the assessees jointly at Rs. 54,000/- being the accommodation which the company has taken on lease for providing to its employees at Raipur. The petitioners, according to the learned senior counsel, rightly calculated the perquisite in this regard at Rs. 27,000/- for each of the petitioners because the employer himself had given a TDS certificate after due calculation valuing these perquisites at Rs. 27,000/- for each of the petitioners. According to the counsel, this perquisite was correctly worked out for the assessment year 2005-2006 in terms of Rule 3 Table 1, The relevant part with the facts in question is reproduced below:

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Circumstances	*Where accommodation is unfurnished*
(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 20% of salary whichever is lower as reduced by the rent, if any, actually paid by the employee.*

Applying this rule the perquisite of Rs. 27,000/- in each case was worked out as follows:-

A.	*Annual rent of the residential premises Occupied by both the petitioner jointly*	*: Rs. 54,000/-*
B.	*10% salary of petitioner No. 1*	*: Rs. 66,834/-*
	10% salary of petitioner No. 2	*: Rs.1,63,933/-*

Lower of the two being the annual rent of Rs. 54,000/- was divided equally between both the petitioners at Rs. 27,000/- which was correctly shown and taxed as perquisite in the case of both the petitioners as the accommodation was jointly occupied by wife and the husband."

The learned senior counsel therefore further contended that no reasonable man could reach a finding on the basis of TDS form and the return that the assessee was enjoying the perquisite of rent free accommodation from his employer at EHIRC Towers, more so as the same is not new material discovered which was available after the finalization of the return for the assessment year under Section 143(1). We may also note that in the writ petition the petitioners have referred to the correspondence and the questionnaire which was initiated by the officer seeking to make roving and fishing enquiry which has nothing to do with the reasons recorded seeking reopening of the assessment. The details of these questions which have been stated in the questionnaire have been referred to in para 9 of the writ petition and which we are not reproducing herein. However, a reference to the same clearly shows as

to how the said questionnaire demands various things such as asking f sources of income, copies of bank accounts with the details of the family members and the children with their particulars including the school they were studying, details of gifts received or given, all foreign trips made by them and family, cash flow statement for the year and the statement of affairs for the relevant year and the earlier year for comparison, details of LIC, PPF investments and so on. It is quite clear that none of these queries pertain to the reasons for reopening of the assessment. The learned senior counsel has further contended that the second reason for reopening of the assessment with respect to alleged non-disclosure of the annual letting value, the same has no basis because the petitioners were at Raipur due to their employment and, therefore, by virtue of Section 23(2)(b) the annual let-able value was nil. The relevant portion of this Section reproduced below:-

> *" (2) Where the property consists of a house or part of a house which—*
> *(a) ....*
> *(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him.*
> *the annual value of such house or part of the house shall be taken to be nil."*

The learned senior counsel therefore contended that this was a clear c case of harassment.

4. The learned counsel for the Revenue has on the other hand supported the reasons for reopening of the assessment for the reasons which have already been recorded and reproduced hereinabove.

5. We are of the firm opinion that the present writ petition is liable to succeed with costs. The reasons which have been recorded seeking reopening of the assessment, and as reproduced above show that there is no application of mind by the Assessing Officer which can be said to be the mind of a reasonable person to arrive at a conclusion, which has been arrived at in view of the reasons recorded. Firstly, the reasons do not refer to any material which has come to the notice of the officer subsequent to the finalization of the assessment under Section 143(1). Also, it is not the case that the assessee has concealed any material particulars or any facts from the department. The conclusions which have been arrived at by the officer in the reasons recorded seeking reopening of the assessment, are in fact wholly without basis because in the relevant assessment year the assessees were in fact posted at Raipur and there was therefore no question that the assessees occupied a rent free accommodation from its employers at A-13, EHIRC Residential Tower, Okhla Road, New Delhi. As already stated above, in fact after August

2001 and even when the petitioners were in Delhi, they were occupying their own flat in Shipra Sun City and were not occupying any accommodation of the employers. It is not understood as to how the Assessing Officer has arrived at the conclusion that in the relevant assessment year the assessees were in occupation of rent free accommodation at New Delhi from their employers. So far as the issue of non-disclosure of the annual letting value of their flat at Shipra Sun City, it is quite clear that Section 23(2)(b) clearly provided that the annual letting value has to be taken as nil when the house property cannot be occupied by the assessee by reason of the fact that owing to his employment he is stationed at any other place and there he resides in a building not belonging to him. Again, in the reasons recorded seeking reopening of the assessment, the officer has failed to disclose as to how he had come to the finding and on the basis of which materials. Clearly, it is not a finding which any reasonable man could have been arrived at in the facts and circumstances of the case. In fact, it is for this reason that the Assessing Officer has not stated that what are the new materials in this regard which has come into his possession for seeking of reopening of the assessment and how the assessee has concealed any facts or particulars in his return of income. The reasons recorded are therefore *ex facie* without any foundation and are in fact wholly baseless conclusion.

6. Accordingly, we quash the notices dated 19.2.2007 issued agair the petitioners under Sections 147/148 of the Act. We also quash the letter/questionnaire dated 7.9.2007 to the extent it contains fishing and roving enquiries wholly disconnected with the two issues of alleged escapement of income under Sections 147/148 of the Act.

7. The writ petition is therefore accordingly allowed with costs of Rs. 25,000/-. Amount of costs be deposited within one week to the Delhi High Court Legal Services Committee and proof of paying the cost shall be taken on record.

A.K. SIKRI, J

JUDGE

VALMIKI J. MEHTA

JUDGE

September 08, 2009

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