IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

W.P.(C).No.28573 of 2003 (B)

PETITIONER(S):-
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1. HINDUSTAN NEWSPRINT OFFICERS' ASSOCIATION [REG.NO.K.530], REPRESENTED BY P.K.MURALIDHARAN (B.NO.2110, MANAGER), HAVING ITS OFFICE AT NEWSPRINT NAGAR P.O., KOTTAYAM - 686 616.

2. N.D.MADANAN 9B.NO.1548, MANAGER), GENERAL SECRETARY, HPC ENGINEERS ASSOCIATION (KERALA), RESIDINTG AT QTR.NO.C3/6, HNL TOWNSHIP, NEWSPRINT NAGAR, KOTTAYAM - 686 616.

BY ADVS.DR.SEBASTIAN CHAMPAPPILLY
SRI.ANTONY M. AMBAT.

RESPONDENT(S):-
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI - 110 001.

2. HINDUSTAN NEWSPRINT LTD., REPRESENTED BY TIS MANAGING DIRECTOR, NEWSPRINT NAGAR, KOTTAYAM - 686 616.

3. CENTRAL BOARD OF DIRECT TAXES, REPRESENTED BY ITS CHAIRMAN, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI - 110 001.

4. COMMISSIONER OF INCOME TAX, OFFICE OF THE COMMISSIONER OF INCOME TAX, KOCHI - 682 018.

R1, R3 & R4 BY STANDING COUNSEL FOR GOVERNMENT OF INDIA (TAXES)
SRI.JOSE JOSEPH.
R2 BY ADVS. SRI.E.K.NANDAKUMAR [SENIOR ADVOCATE].
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.28573 OF 2003-B

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 TRUE COPY OF THE RESOLUTION DATED 26.6.2003.

EXT.P2 TRUE COPY OF THE RESOLUTION DT.1.8.2003.

EXT.P3 TRUE COPY OF THE STATEMENT FOR THE ASSESSMENT YEAR 2002-2003 DATED 8.7.2002 ISSUED TO MR.MURALIDHARAN P.K.

EXT.P4 TRUE COPY OF THE STATEMENT FOR THE ASSESSMENT YEAR 2003-2004 DATED 8.7.2002 ISSUED TO MR.MURALIDHARAN P.K.

EXT.P5 TRUE COPY OF THE NOTIFICATION NO.940(e) OF 2001 DATED 25.09.2001 ISSUED BY THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF THE NOTICE DATED 9.4.2002 ISSUED BY THE RESPONDENT COMPANY.

EXT.P7 TRUE COPY OF THE REPRESENTATION GIVEN BY THE 1ST PETITIONER TO THE 4TH RESPONDENT DATED 7.7.2003.

EXT.P8 TRUE COPY OF THE REPRESENTATION GIVEN BY THE 2ND PETITIONER TO THE RESPONDENT COMPANY DATED 28.3.2003.

EXT.P9 TRUE COPY OF THE INTERIM ORDER DTD.27.3.2002 OF THE HIGH COURT OF CALCUTTA IN W.P.NO.4142(W) OF 2002.

EXT.P10 TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) II, COCHIN DATED 14.9.1994 IN APPEAL NO.ITA 63/DC/K/CIT/9394.

EXT.P11 TRUE COPY OF THE CERTIFICATE IN FORM NO.16 FOR THE ASSESSMENT YEAR 2004-2005 ISSUED BY THE KOLKATA UNIT OF THE HOLDING COMPANY TO SHRI.S.M.CHETRI, AN EMPLOYEE OF KOLKATA UNIT.

EXT.P11(a) TRUE COPY OF THE 'SARAL' FORM FOR THE ASSESSMENT YEAR 2002-2003 SUBMITTED BY MANOJ KUMAR SARKAR, AN EMPLOYEE OF THE PANCHGRAM UNIT OF THE HOLDING COMPANY.

EXT.P11(b) TRUE COPY OF THE 'SARAL' FORM FOR THE ASSESSMENT YEAR 2004-2005 SUBMITTED BY MANOJ KUMAR SARKAR, AN EMPLOYEE OF THE NAGAON UNIT OF THE HOLDING COMPANY.

RESPONDENT'S EXHIBITS:-
-------------------------------------- NIL.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.28573 of 2003-B

Dated this the 21st day of October, 2015

JUDGMENT

The petitioners herein represent the cause of the Officers and Engineers under the 2nd respondent-Company, a public sector undertaking. The petitioners were aggrieved with the introduction of the 22nd Amendment Rules of 2001 of the Income Tax Rules, 1962; by which the value of residential accommodation provided to the petitioners were treated as perquisites for assessment of income under the Income Tax Act, 1961 [for brevity "the Act"]. The challenge, in fact, specifically was on the ground that there is discrimination insofar as the machinery provisions made by the Rules of 2001, where the Government employees and other employees are treated differently. The said contention is no longer *res integra* as the same having been held to be perfectly proper by the Hon'ble Supreme Court in ***Arun Kumar v. Union of India*** **[(2006) 286 ITR 89 (SC)].** The ground of discrimination is negatived respectfully following the afore-cited decision.

2. However, the learned counsel for the petitioners submits that the Supreme Court has read down the machinery provision and left liberty to the assessee to contend that there is no concession in the matter of accommodation provided by the employer and in such circumstance, the case is not covered by Section 17(2)(ii) of the Act. There is also another contention raised that the petitioners are entitled to exemption on the basis of the "remote area" classification. The learned Standing Counsel for Government of India (Taxes) would submit that these are all matters which could be looked into by the Assessing Officer itself. In such circumstances, the petitioners are entitled to urge such contentions before the Assessing Officer himself.

3. As has been stated above, there is no discrimination as alleged, in the machinery provisions, and that is covered by the decision in ***Arun Kumar*** (*supra*). All other aspects, the petitioners individually or as a group, would be entitled to approach the Assessing Officer and in that event they are also entitled to urge that the Guest Houses of the Company were so granted exemption in the matter of income tax assessed on the Company, on the ground of remote-area classification.

The writ petition would stand closed with the above observation.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]