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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : September 15, 2015*

+ **LPA 775/2010**

INDIAN OIL CORPORATION LTD. Appellant

Represented by: Mr.Rajat Navet, Advocate with
Ms.Sanya Talwar, Advocate

versus

RADHEY SHYAM Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. The respondent and his wife are employees of the appellant : Indian Oil Corporation and were entitled to the benefit of house rent allowance in terms of a memorandum of settlement entered into between the management of the appellant and the union of its employees. The last settlement which had taken place was effective up to December 31, 1996 and house rent allowance was being paid by the appellant to its employees as per the settlement in question.

2. Pending a demand by the union to increase the house rent allowance another allowances as also revision of the pay scales and its consideration by the management of the appellant the employees of the appellant continued to receive house rent allowance as per the previous settlement duration whereof was till December 31, 1996. Negotiations continued and fructified

when on January 04, 2001 a memorandum of settlement was signed between the management of the appellant and the union of its workmen, and relevant would it be to note that as per clause 3.1 and 3.2 of the settlement, it was agreed as under:-

“3.1 This Settlement shall be in force for a period of 10 years from 1st January, 1997 to 31st December, 2006.

3.2 This Settlement shall be effective from 1st January, 1997 so far as the revision of Pay Scales, Dearness Allowance, House Rent Allowance, City Compensatory Allowance, Special Allowance, Duty Allowance, Overtime, Leave Encashment, transfer benefits, Provident Fund, Gratuity and SBF are concerned. Other provisions shall be effective from the dates as specified under the respective heads.”

3. The settlement was notified on February 02, 2001 and clause 5.4 of the office memorandum laid down terms/conditions on which house rent allowance was receivable. The said clause reads as under:-

“5.4 With the removal of ceiling on drawal of HRA without production of rent receipt in the case of non-officers, HRA in respect of husband and wife employees who are posted at the same location and claiming HRA without production of rent receipt, w.e.f. 01.01.1997 HRA (without rent receipt) as per their option, shall be admissible to only one of them except where the rental value of the house exceeds the HRA paid to employee in which case the spouse may draw HRA to the extent of shortfall in the assessed rent and rent paid to the employee. Similarly, in a case where rent receipt had been produce and the rental paid for accommodation exceed the HRA entitlement, the spouse may be allowed to draw HRA at the applicable rate to the extent of the shortfall in the amount under the rent receipt and rent entitlement.”

4. Thus, pertaining to the house rent allowance, the rates were revised as

per clause 3.1 and 3.2 with retrospective effect i.e. January 01, 1997.

5. Making payment to the appellant and his wife of the house rent allowance up till January, 2003, payment thereof to the respondent was stopped with effect from February, 2003, on the ground that respondent's wife was also drawing house rent allowance and both were posted at the same location. As per the appellant if husband and wife were posted at the same location, house rent allowance was admissible without production of rent receipt to one spouse and where the rent exceeded the house rent allowance entitlement to one spouse, the other was entitled to the extent of the shortfall. Not only that, recoveries were sought to be made. At that stage the respondent filed a writ petition taking a stand that employees of the appellant would be entitled to house rent allowance at par with the Central Government Employees. The respondent also took the stand that the settlement arrived at on January 04, 2001 could not be made retrospectively applicable and therefore the office memorandum dated February 02, 2001 could also not be applied retrospectively.

6. The learned Single Judge has split the disputed period into four parts. Part 1 period is from January 01, 1997 to January 03, 2001 (for the reason the settlement was arrived at on January 04, 2001). Part two period is from January 04, 2001 till January 31, 2003 i.e. the period during which the appellant gave the house rent allowance to the appellant without production of a rent receipt. Part 3 period is from February 01, 2003 till March 21, 2004. Part 4 period is from March 22, 2004 till April 01, 2005.

7. The learned Single Judge has held that the settlement did not provide for its retrospective applicability. Therefore, the learned Single Judge has held that no recovery could be made for the Part one period.

8. The reasoning of the learned Single Judge is clearly fallacious for the reason clause 3.1 and 3.2, contents whereof have we have noted hereinabove, of the settlement dated January 04, 2001 clearly made the same retrospectively applicable from January 01, 1997. The learned Single Judge has also overlooked that on the retrospective applicability of the settlement the respondent took benefit of the higher rate of house rent allowance and thus could not claim that it could not be enforced against him from a retrospective date.

9. The learned Single Judge has then looked at the second period commencing from January 04, 2001 to January 31, 2003, in the context of the guidelines dated February 05, 2001 and clause 5.4 thereof.

10. The learned Single Judge has held that though payments were made in contravention of the settlement agreement dated January 04, 2001 no recovery could be made because clause 5.4 notified under the OM dated February 05, 2001 was not a complete bar for payment of house rent allowance to both husband and wife. Learned Single Judge has held that both were entitled to house rent allowance to the extent of the assessed rent of their accommodation. Learned Single Judge held that if the appellant had stopped payment of house rent allowance to the petitioner, he could have exercised the option of having the rent assessed and if it was found that the rent paid for the accommodation occupied by him and his wife was in excess of the house rent allowance received by the wife the respondent could have received the differential balance. On said reasoning the learned Single Judge has held that no recovery could be made for the period post January 04, 2001 till the month of January, 2003.

11. The reasoning of the learned Single Judge is clearly erroneous on

account of the fact that clause 5.4 of the OM dated February 05, 2001 is a complete bar to receive house rent allowance without production of rent receipt where both husband and wife are at the same location because said option i.e. entitlement to receive house rent allowance without rent receipt production was as per the option which could be exercised to by only one subject to the exception where the rental value of the house exceeded the house rent allowance.

12. For this period, the writ petition filed by the respondent was liable to be disposed of issuing a direction that the writ petitioner could exercise the option and so could his wife and since the wife of the respondent received the house rent allowance without production of the house rent receipt, the appellant could claim the differential house rent allowance by producing the house rent receipt and claimed the differential after adjustment of what his wife has received.

13. The next period discussed by the learned Single Judge is from February 01, 2003 to March 21, 2004 and since the decision is against the writ petitioner who has not filed any writ petition challenging the impugned decision qua said period, we are not noting the view taken by the learned Single Judge and the reasons thereof.

14. For the period post March 22, 2004 the learned Single Judge has observed that it would enure only till April 01, 2005 for the reason with effect from March 31, 2005 the writ petitioner occupied a new accommodation and received house rent allowance of the basis of assessed rent. For the period with effect from March 22, 2004 till March 31, 2005 the reason given by the Judge is that HRA was being paid to other couples whose particular were given in an affidavit filed by the petitioner to which

no counter had been filed. A reasoning which is totally incorrect for the reason we have searched the record of the writ petition and do not find any such affidavit filed by the writ petitioner.

15. Pertaining to this period our reasons to set aside the decision of the learned Single Judge and substitute it for the direction concerning the second period warrants it to be declared that the respondent would be entitled to have the rent assessed for said period as well and then claim the differential as his entitled house rent allowance.

16. The appeal is accordingly allowed setting aside the impugned decision dated July 01, 2010. The writ petition filed by the respondent would be allowed in terms above.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 15, 2015
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