

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.4.2016

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice M.V.MURALIDARAN

Writ Petition Nos.7869 and 10050 to 10054 of 2008, 5153 to 5155 of 2010, 4005, 5236 and 7211 of 2011, 7391 of 2012, 9264 of 2014 and 8466, 9495 and 9551 of 2015 and all connected pending MPs

All India Union Bank Officers
Federation, Mylapore, Chennai-4
rep.by its President
Mr.N.Govindarajulu

...Petitioner in
WP.No.7869/2008

Lakshmi Vilas Bank Officers
Association, rep.by its General
Secretary Mr.R.Subramanian

...Petitioner in
WP.No.10050/2008

Catholic Syrian Bank Officers
Association, rep.by its Deputy
General Secretary Mr.Anto K.J.
(Kundukulam)

...Petitioner in
WP.No.10051/2008

Dhanalakshmi Bank Officers
Organisation, rep.by the Vice
President Mr.K.Karthigeyan

...Petitioner in
WP.No.10052/2008

Federal Bank Officers Association,
rep.by its Regional Secretary
Mr.P.V.Ponnappan

...Petitioner in
WP.No.10053/2008

South Indian Bank Officers Association,
rep.by its Joint Secretary
Mr.V.P.Vincent

...Petitioner in WP.
No.10054 of 2008

The Dhanalakshmi Bank Officers'
Organisation rep.by its Executive
Committee Member Mr.S.R.
Radhakrishnan

...Petitioner in WP.
No.5153 of 2010

The Catholic Syrian Bank Officers
Association, rep.by its Member
Mr.Bejoy Verghese, P.

...Petitioner in WP.
No.5154 of 2010

The South Indian Bank Officers
Association, rep.by its Executive
Committee Member Mr.Kuriala
Thomas

...Petitioner in WP.
No.5155 of 2010

The Federal Bank Staff Union,
rep.by its Secretary Mr.Shaju
Antony

...Petitioner in WP.
No.4005 of 2011

The South Indian Bank Executive
Welfare Society, rep.by its Joint
Secretary Mr.P.T.Joseph

...Petitioner in WP.
No.5236 of 2011

All India Vijaya Bank Officers'
Association, rep.by its Regional
Secretary Mr.S.Nainar

...Petitioner in WP.
No.7211 of 2011

All India Bank Officers Association,
rep.by its Deputy General Secretary

...Petitioner in WP.
No.7391 of 2012

Syndicate Bank Employees' Union,
rep.by its Vice President

...Petitioner in WP.
No.9264 of 2014

All India Bank Officers Association,
rep.by its General Secretary Shri.S.
Nagarajan

...Petitioner in WP.
No.8466 of 2015

All India Bank Officers Association,
rep.by its Deputy General Secretary
Shri.M.A.Srinivasan

...Petitioner in both
WP.Nos.9495 & 9551 of 2015

Vs

1. Union of India, rep. by its
Secretary to Government,
Ministry of Finance, New Delhi.
2. The Central Board of Direct Taxes,
North Block, New Delhi-1. ...R1 & R2 in all the WPs
3. The Chief Commissioner of Income
Tax, Ayakar Bhavan, Chennai-34. ...R3 in WP.Nos.
7869 and 10050 to
10054 of 2008,
5153 to 5155 of
2010, 4005, 5236,
7211 of 2011, 9264
of 2014, 8466, 9495
& 9551 of 2015
4. Union Bank of India, Nariman Point,
Mumbai-21. ...R4 in WP.No.
7869 of 2008
5. Lakshmi Vilas Bank rep. by its
Managing Director, Administrative
Office, Kathapalai, Karur-6. ...R4 in WP.No.
10050 of 2008
6. Catholic Syrian Bank, Administrative
Office, CSB Bhavan, Thrissur.
7. Catholic Syrian Bank, Circle Office,
Chennai-10. ...R4 & R5 in both
WP.Nos. 10051 of
2008 & 5154/2010
8. The Dhanalakshmi Bank Limited,
the Round, Naicknal, Trichur.
9. The Dhanalakshmi Bank Limited,
Zonal Office, Chennai-2. ...R4 & R5 in both
WP.Nos. 10052 of
2008 & 5153/2010
10. The Federal Bank Limited, rep. by
its Chairman, Regional Office,
Aluva, Kerala State.
11. The Regional Officer,
Federal Bank Limited,
Royapettah, Chennai-14. ...R4 & R5 in both
WP.Nos. 10053 of
2008 & 4005/2011

- 12.South Indian Bank, Head Office,
Trissur, Kerala State.
- 13.South Indian Bank, Regional
Office, Chennai-34. ...R4 & R5 in WP.
Nos.10054 of 2008,
5155 of 2010 &
5236 of 2011
- 14.Vijaya Bank, rep.by its Chairman
& Managing Director, Bangalore-1.
- 15.Vijaya Bank, Regional Office,
Chennai-8. ...R4 & R5 in WP.
No.7211 of 2011
- 16.The State Bank of India, rep.by its
Chairman, State Bank of India
Corporate Centre, Mumbai. ...R3 in WP.No.
7391 of 2012
- 17.Syndicate Bank, Corporate Office,
rep.by the Chairman & Managing
Director, Bangalore-9.
- 18.Syndicate Bank, Field General
Manager's Office, rep.by its
Field General Manager, Chennai-1. ...R4 & R5 in WP.
No.9264 of 2014
- 19.Punjab National Bank, rep.by
Chairman & Managing Director,
Head Office, New Delhi-66.
- 20.Punjab National Bank, rep. by
Circle Head, Regional Office,
Chennai-2.
- 21.Canara Bank, rep.by Regional
Head, Teynampet, Chennai-18.
- 22.Canara Bank, rep.by its Chairman
& Managing Director, Bangalore-2.
- 23.Corporation Bank, rep.by its
Chairman & Managing Director,
Mangalore-1.
24. Corporation Bank rep. by Regional Head,
Rayapettah, Chennai 600 014.

25. Central Bank of India, rep.by its
Chairman & Managing Director,
Mumbai-21.
26. Central Bank of India, rep.by its
Regional Head, Egmore, Chennai-8.
27. Oriental Bank of Commerce,
rep.by its Chairman & Managing
Director, New Delhi-1.
28. Oriental Bank of Commerce,
rep.by its Regional Head,
Chennai-2.R4 to R13 in
WP.No.8466/2015
29. Indian Bank, rep.by Chairman &
Managing Director, Chennai-14.R4 in WP.No.9495/2015
30. Allahabad Bank, rep.by Chairman &
Managing Director, Head Office,
Kolkatta-1.
31. Bank of Maharashtra, rep.by its
Chairman & Managing Director,
Lok Mangal, Pune-5.
32. Union Bank of India, rep.by its
Chairman & Managing Director,
Mumbai-21.
32. Vijaya Bank, rep.by its Chairman
& Managing Director, Bangalore-1.
33. Punjab & Sind Bank, rep.by its
Chairman and Managing Director, New Delhi-8.
34. Andhra Bank rep.by its Chairman
& Managing Director, Head Office,
Hyderabad-4.
35. Dena Bank, rep.by its Chairman
& Managing Director, Dena
Corporate Centre, Mumbai-51.
36. UCO Bank, rep.by its Chairman
& Managing Director, Kolkatta-1.
37. United Bank of India, rep.by its
Chairman & Managing Director,
Kolkatta-1.

38.State Bank of India, rep.by its
Chairman & Managing Director,
Mumbai-21.

39.IDBI Bank Ltd., rep.by its
Chairman & Managing Director,
Mumbai-5.

40.Syndicate Bank, rep.by its Chairman
& Managing Director, Corporate Office,
Bangalore-9.

...Respondents 4
to 15 in WP.No.
9551 of 2015

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of a

(i) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007, as also Circular dated 15.2.2008 issued by the 4th
respondent Bank are unconstitutional, ultra vires and null and
void (WP.No.7869 of 2008)

(ii) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007 and Circular dated 14.1.2008 issued by the 4th
respondent Bank are unconstitutional, ultra vires and null and
void (WP.No.10050 of 2008)

(iii) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007 and also Circular dated 2.1.2008 issued by the 4th
respondent Bank are unconstitutional, ultra vires and null and
void (WP.No.10051 of 2008)

(iv) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007 and also Circular dated 7.12.2007 issued by the 4th
respondent Bank are unconstitutional, ultra vires and null and
void (WP.No.10052 of 2008)

(v) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007 and also Circular dated 16.7.2007 issued by the 4th
respondent Bank are unconstitutional, ultra vires and null and
void (WP.No.10053 of 2008)

(vi) Writ of Declaration declaring that the amendment to
Section 17(2) of the Income Tax Act, 1961 as amended by Finance
Act 2007 and also Circular dated 6.9.2007 issued by the 4th

respondent Bank are unconstitutional, ultra vires and null and void (WP.No.10054 of 2008)

(vii) Writ of Declaration declaring that Rule 3(7)(i) of the Income Tax Rules and also Circular dated 5.2.2009 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.5153 of 2010)

(viii) Writ of Declaration declaring that Rule 3(7)(i) of the Income Tax Rules and also Sub-Para A of Para 4 of Circular dated 2.1.2008 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.5154 of 2010)

(ix) Writ of Declaration declaring that Rule 3(7)(i) of the Income Tax Rules and also Sub-Para (c) of Para B of Circular dated 19.9.2009 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.5155 of 2010)

(x) Writ of Declaration declaring that Rule 3(7)(i) of the Income Tax Rules and also Sub-Para A of Para 15 of Circular dated 1.2.2011 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.4005 of 2011)

(xi) Writ of Declaration declaring that Rule 3(7)(i) of the Income Tax Rules and also Sub-Para (c) of Para B of Circular dated 26.10.2010 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.5236 of 2011)

(xii) Writ of Declaration declaring that Section 17(2)(iii) of the Income Tax Act as well as Rule 3(7)(i) of the Income Tax Rules and also Para (2) at Page No.28 of Circular No.120/07 dated 16.7.2007 issued by the 4th respondent are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.7211 of 2011)

(xiii) Writ of Declaration declaring that Section 17(2)(vi) of the Income Tax Act, 1961 and Rule 3(7)(i) of the Income Tax Rules 1962 and the Consequential Circular dated 19.3.2010 (Circular No.CDO/P& HRD-PM/76/ 2009-10) issued by the 3rd respondent as unconstitutional, ultra vires of the Income Tax Act (WP.No.7391 of 2012)

(xiv) Writ of Declaration, declaring that Section 17(2)(vi) of the Income Tax Act, 1961 and Rule 3(7)(i) of the Income Tax Rules, 1962 and also the Consequential Circular No.376-2013-BC-AUDIT-11 dated 31.12.2013 issued by the 4th respondent are

unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.9264 of 2014)

(xv) Writ of Declaration declaring that Section 17(2)(vi) of the Income Tax Act, 1961 and Rule 3(7)(i) of the Income Tax Rules and Sub-Para (2) of Para B in pursuance of the circular issued by the respondents 4 to 13 are unconstitutional, ultra vires the Income Tax Act and therefore null and void (WP.No.8466 of 2015)

(xvi) Writ of Declaration declaring that Section 17(2)(viii) of the Income Tax Act, 1961 and Rule 3(7)(i) of the Income Tax Rules 1962 as unconstitutional, ultra vires of the Income Tax Act and therefore null and void (WP.No.9495 of 2015) (prayer amended as per order dated 28.3.2016 by VRSJ and NKKJ in MP.No.2 of 2015) and

(xvii) Writ of Declaration declaring that Section 17(2)(viii) of the Income Tax Act, 1961 and Rule 3(7)(i) of the Income Tax Rules 1962 as unconstitutional, ultra vires of the Income Tax Act and therefore null and void (WP.No.9551 of 2015) (prayer amended as per order dated 28.3.2016 by VRSJ and NKKJ in MP.No.2 of 2015).

For Petitioners in
WP.Nos.7869 & 10050 to 10054
of 2008, 5153 to 5155 of 2010 &
4005, 5236 and 7211 of 2011 : Mr.Srinath Sridevan

For Petitioners in
WP.Nos.7391 of 2012 & 8466
& 9551 of 2015 : Mr.Jayesh B.Dolia for
M/s.Aiyer & Dolia

For Petitioner in
WP.No.9264 of 2014 : Mr.N.G.R.Prasad for
M/s.Row & Reddy

For Petitioner in
WP.No.9495 of 2015 : Mr.V.P.Mohammed Moin

For Respondents 1 & 2 in
all the WPs : Mr.T.Pramod Kumar Chopda, SSC

For Respondent-3 in
WP.Nos.7869 & 10050 to
10054 of 2008, 5153 to 5155
of 2010, 4005, 5236 & 7211 of
2011, 9264 of 2014 & 8466,

9495 and 9551 of 2015 : Mr.J.Narayanasamy, JSC

For Respondent-4 in
WP.No.7869 of 2008 &
Respondents 4 & 5 in
WP.Nos.10050 to 10054 of 2008 &
9464 of 2008 &
Respondents 10 & 11 in
WP.No.8466 of 2015 : M/s.T.S.Gopalan & Co.

For Respondent-5 in
WP.Nos.5153 to 5155 of 2010 : Mr.Rajamanickam

For Respondent-5 in
WP.No.4005 of 2011 : Mr.M.Vaidyanathan

For Respondent-5 in
WP.No.7211 of 2011 : Mr.P.R.Raman

For Respondent-3 in
WP.No.7391 of 2012 : Mr.S.Sethuraman

For Respondent-9 in
WP.No.8466 of 2015 : Mr.V.Suthakar

For Respondent-15 in
WP.No.8466 of 2015 : M/s.Murthi & Vasan

COMMON ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J)

The Staff Unions and Officers' Associations of various banks have come up with these writ petitions, challenging either Section 17(2)(iii) or 17(2) (vi) or Rule 3(7)(i) of the Income Tax Rules or both.

2. We have heard M/s.Srinath Sridevan, Jayesh B.Dolia and N.G.R. Prasad, learned counsel appearing for the writ petitioners, Mr.T.Pramod Kumar Chopda and Mr.J.Narayanasamy, learned Standing Counsel for the Income Tax Department and the learned counsel appearing for the banks.

3. Chapter IV of the Income Tax Act, 1961 contains various provisions from Sections 14 to 59, indicating the method of computation, of total income under various heads such as salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.

4. Section 15 indicates the items that are chargeable to income tax under the head "salaries". The deductions that could be allowed from the income chargeable under the head "salaries" are indicated in Section 16.

5. Sub-Section (1) of Section 17 contains a list of items that would be included within the salary, the list of items that would be included as perquisite and the list of items that would be included as profits in lieu of salary. The items includible under the head salary are indicated in Sub-Section (1), the items includible as perquisite are indicated in Sub-Section (2) and the items includible as "profits in lieu of salary" are indicated in Sub-Section (3).

6. Prior to 1.4.2010, Sub-Section (2) of Section 17 contained only 6 items that were included as perquisites. Those 6 items, in simple terms, could be stated as follows:-

(i) the value of rent free accommodation provided by the employer of the assessee;

(ii) the value of any concession in the matter of rent respecting any accommodation provided by the employer;

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in cases indicated in the Section;

(iv) any sum provided by the employer in respect of any obligation, which, but for such payment, would have been payable by the assessee;

(v) any sum payable by the employer whether directly or through a fund other than a recognized provident fund or accrued superannuation fund etc., and

(vi) the value of any other fringe benefit or amenity (excluding the fringe benefits chargeable to tax under Chapter XII-H) as may be prescribed.

7. But, by the amendment under Finance (No.2) Act, 2009, three items under Clauses (vi), (vii) and (viii) were substituted for the existing Clause (vi). In other words, after the amendment with effect from 1.4.2010, there are eight items included as perquisites under Sub-Section (2) of Section 17.

8. What was Clause (vi) before 1.4.2010 actually became Clause (viii) after 1.4.2010, with a slight modification. After 1.4.2010, Clause (viii) of Sub-Section (2) of Section 17 reads as follows:-

"(viii) the value of any other fringe benefit or amenity as may be prescribed."

The only difference between Section 17(2)(vi) as it stood before 1.4.2010 and Section 17(2)(viii) as it stands after 1.4.2010 is the absence of a reference to the fringe benefits chargeable to

tax under Chapter XII-H found within brackets in Section 17(2) (vi) before its amendment. Otherwise, what was Section 17(2) (vi) before 1.4.2010 has actually become Section 17(2) (viii) after 1.4.2010, without the words that appeared in brackets.

9. Interestingly, many of the writ petitioners did not even notice the amendment that Section 17(2) had undergone, under Finance (No.2) Act, 2009 and hence, the prayer made by some of them in their writ petitions, is to declare Section 17(2) (vi) as unconstitutional. However, it should be pointed out that some writ petitions are filed in 2008 and some have been filed in 2010 and 2011. Therefore, at the request of the learned counsel appearing for the petitioners, we have treated the writ petitions challenging Section 17(2) (vi), as those challenging Section 17(2) (viii).

10. As we have stated earlier, some of the writ petitions challenge Rule 3(7) (i) of the Income Tax Rules, 1962, either independently or together with a challenge to Section 17(2) (viii). Therefore, we shall now see what this Rule is.

11. Section 17(2) (viii) does not quantify a fringe benefit or amenity. The Parliament has left it to the Government to prescribe what a fringe benefit or amenity would be. This is clear from the expression "as may be prescribed" used in Section 17(2) (viii).

12. Therefore, Rule 3 of the Income Tax Rules, 1962 prescribes the method of valuation of perquisites, for the purpose of Section 17(2) (viii). Incidentally, Rule 3 has undergone sweeping changes in a period of 10 years from 2001 to 2010. The changes undergone by Rule 3 can be summarized as follows:-

(I) Prior to 1.4.2001, Rule 3 merely contained Clauses (a) to (g). While Clause (a) dealt with rent free residential accommodation, Clause (b) dealt with value of residential accommodation provided at a concessional rate, Clause (c) dealt with the value of a motor car provided by the employer for use by the assessee exclusively for his private or personal purposes, Clause (d) dealt with the value of any benefit such as gas, electrical energy or water provided free of charge for the house hold consumption of the assessee, Clause (e) dealt with the value of the benefit resulting from the provision of free educational facilities for the member of the house-holder of the assessee, Clause (f) dealt with the value of any benefit or amenity resulting from the provision of journey free of cost or at concessional rates and Clause (g) dealt with any other benefit or amenity not included in the other clauses.

(II) Under the Income Tax (Twenty Second Amendment) Rules 2001, the entire Rule 3 was substituted by a new Rule 3, consisting of 7 Sub-Rules with each Sub-Rule again sub-divided into several clauses with provisos. These amended Rules came into effect from 1.4.2001.

13. Clause (i) of Sub-Rule (7) of Rule 3 of the Income Tax Rules, 1962, inserted with effect from 1.4.2001 under the Income Tax (Twenty Second Amendment) Rules, 2001, read as follows:-

"(7) In terms of provisions contained in Sub-Clause (vi) of Sub-Section (2) of Section 17, the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined in the manner provided hereunder:

(i) The value of the benefit to the assessee resulting from the provision of interest free or concessional loan made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the simple interest computed at the rate of 10% per annum in respect of loans for house and conveyance and at the rate of 13% per annum for other loans on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

However, no value would be charged if such loans are made available for medical treatment in respect of diseases specified in Rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate Rs.20,000:

Provided that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme."

14. Clause (i) of Sub-Rule (7) of Rule 3 underwent an amendment with effect from 1.4.2004 under Income Tax (First Amendment) Rules, 2004. With effect from 1.4.2004, Rule 3(7)(i) reads as follows:-

"(7) In terms of provisions contained in Sub-Clause (vi) of Sub-Section (2) of Section 17, the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined in the manner provided hereunder:

(i) The value of the benefit to the assessee resulting from the provision of interest-free or [concessional loan for any purpose made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the simple interest computed at the rate charged per annum by the State Bank of India Act, 1955 (23 of 1955), as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it] on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

However, no value would be charged if such loans are made available for medical treatment in respect of diseases specified in Rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate Rs.20,000:

Provided that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme."

15. Therefore, two things will be clear. They are

(i) The value of an interest free loan or a concessional loan made available to an employee or a member of household, was included as one of the items of perquisites only with effect from 1.4.2001.

(ii) For a full period of 3 years from 1.4.2001 to 1.4.2004, a particular method of valuation was adopted in Rule 3(7)(i). But, the method of valuation was changed under Rule 3(7)(i) with effect from 1.4.2004.

16. The petitioners herein did not choose to challenge the method of valuation adopted from 1.4.2001 to 1.4.2004. But, they have chosen to challenge the method of valuation prescribed in Rule 3(7)(i) introduced with effect from 1.4.2004 and that too, only in the year 2008, 2010 and 2011. Keeping this in mind, let us see the grounds on which, either Section 17(2)(viii) or Rule 3(7)(i) or both are challenged.

GROUNDS OF CHALLENGE :

17. The statutory prescriptions are challenged by the petitioners primarily on the following grounds :

(i) By taking the interest charged by the State Bank of India for the loans advanced for the same purpose, as the basis for determining whether the grant of interest free or concessional loan to an employee is a perquisite or not, the Rule Making Authority has deprived the individual employees of their rights to contest a jurisdictional fact namely that what was granted to them was not a concession or benefit or amenity. Therefore, the Rule is ultra vires Section 17(2)(viii), which survived the test of constitutionality only on the ground that it still provided a room for the Assessing Officers to test a jurisdictional fact.

(ii) The Rule is violative of Article 14, since it seeks to treat unequals as equals, by pegging the rate of interest charged by the individual banks on the loans advanced to their employees, with the rate of interest offered by the State Bank of India, without realising that each bank fixes its own rate of interest depending upon the economies of their operation.

(iii) The Rule works out a great hardship to the employees and hardship is a ground on which a subordinate legislation can be tested and

(iv) Rule 3(7)(i) is vitiated in as much as it tends to overrule the judgment of the Supreme Court in Arunkumar Vs Union of India.

FIRST GROUND OF CHALLENGE :

18. The first ground of challenge is that by taking the rate of interest charged by the State Bank of India as the base for determining whether the interest free or concessional loan offered by a bank to its own employee as a perquisite or not, the Rule has taken away the right of the employees to contest an important jurisdictional fact namely whether what is granted to them is a concession, amenity or benefit. This ground of attack actually emanates from some observations contained in the decision of the Supreme Court in Arunkumar Vs. Union of India [2007 (1) SCC 732]. Therefore, it is necessary to take note of the background facts, out of which, the decision in Arunkumar arose.

19. The Officers and Executives of a company by name Tata Iron and Steel Co.Ltd., who were allotted bungalows/flats/residential accommodations in the township of

Jamshedpur, approached the Jharkhand High Court, challenging the validity of Rule 3 of the Income Tax Rules, as amended by the Notification of the Central Board of Direct Taxes dated 25.9.2001. By the said amendment, the method of computing the value of a perquisite in the form of rental accommodation, granted by an employer to his employee, was changed. The case of the employees was that Section 17(2)(ii) would get attracted only when there was a concession in the matter of rent and that the condition precedent for the exercise of the power under Section 17(2) was the existence of a perquisite. Dealing with the said contention, it was observed by the Supreme Court in paragraph 54 of the decision in Arunkumar as follows :

"The grievance of the appellants is that the amended Rule 3 does not provide for giving an opportunity to the assessee to convince the Assessing Officer that no "concession" was shown by the employer to the employee in respect of accommodation provided. Mr. Salve submitted that the rule will apply and the liability to deduct tax will arise only if 'concession' is shown in the matter of rent respecting any accommodation and it is "perquisite" under the Act, the authority must come to the conclusion that Section 17(2)(ii) is attracted. Absence of any provision enabling the assessee to show to the Assessing Officer that it was not a 'concession' and, therefore, 'perquisite' within the meaning of Section 17(2)(ii) of the Act would make Rule 3 ultra vires and unconstitutional. In such a situation, a court of law may not adopt literal interpretation of a provision of law but by applying "reading down" formula, sustain the validity thereof invoking the principles of natural justice."

20. Interestingly, the debate in Arunkumar revolved around two expressions namely (i) perquisite and (ii) concession. This is in view of the fact that the Supreme Court was concerned in that case, with a rule that could be identified with Section 17(2)(ii). Under Section 17(2)(ii), it was only 'a concession' in the matter of rent that was made a 'perquisite'. Therefore, the Supreme Court had to read down the expression 'perquisite', to mean only a concession in the matter of rent and not the very grant of a residential accommodation to an employee. This can be appreciated from the observations contained in paragraphs 71 and 73. Paragraphs 71 and 73 read as follows :

"71. But in our opinion, the fundamental question of applicability of Section 17(2) of the Act still remains. It

cannot be gainsaid that Section 17(2) would apply only if there is 'perquisite'. Indisputably, the definition of 'perquisite' is inclusive in nature and takes within its sweep several matters enumerated in Clauses (i) to (vii). Section 17(2)(ii) declares that the value of any "concession" in the matter of rent respecting any accommodation provided to the employee by his employer would be "perquisite". Nevertheless it must be a "concession" in the matter of rent respecting any accommodation provided by the employer to his employee.

73. It is, therefore, clear that before Section 17(2)(ii) can be invoked or pressed into service and before calculation of concession as per Rule 3 is made, the authority exercising power must come to a positive conclusion that it is a concession. 'Concession', in our judgment is, thus a foundational, fundamental or jurisdictional fact."

21. Eventually, the Court held in paragraphs 84 and 85 of Arunkumar that the existence of a jurisdictional fact is a sine qua non for the exercise of the power and that whether something is a concession or not under Section 17(2)(ii), is a jurisdictional fact. The Court also held that the method of fixation of amount is a fact in issue or adjudicatory fact and that if the assessee contends that there is no concession, the Authority has to decide the question whether there was concession or not.

22. Therefore, even while holding Rule 3 to be intra vires, valid and not inconsistent with the provisions of Section 17(2)(ii), the Supreme Court held in Arunkumar that it is open to the assessee to contend before the Assessing Officer that there was no concession in the matter of accommodation provided by the employer. After holding so, the Supreme Court gave an indication in paragraph 99 as to how one can deal with the situation, as follows :

"For the foregoing reasons, we hold that though Rule 3 of the Rules cannot be held arbitrary, discriminatory or ultra vires Article The Constitution nor inconsistent with the parent Act [Section 17(2)(ii)], it is in the nature of 'machinery-provision' and applies only to the cases of 'concession' in the matter of rent

respecting any accommodation provided by an employer to his employees. Whether or not Parliament could have in the exercise of legislative power created a 'deeming fiction' as to concession in the matter of rent in certain circumstances (for which we express no final opinion), no such deeming provision is found in the Act. It is, therefore, open to the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employees and the case is not covered by Section 17(2)(ii) of the Act."

23. In the light of what the Supreme Court pointed out in paragraphs 54, 71, 73 and 85 of Arunkumar, it is contended by Mr.Srinath Sridevan, learned counsel for the petitioners that Rule 3(7)(i) has taken away the right of the employees to go and argue before the Assessing Officer that the interest charged on the loan taken by them from their employers, was not at all a concession and that therefore, the same should not be treated as a perquisite. According to the learned counsel, Section 17(2)(ii) as well as Rule 3 survived the attack on constitutionality, only because of the same being read down by the Supreme Court, with a leverage to the employees to establish before the Assessing Officers that what was received by them was not a concession. Since Rule 3(7)(i) does not give scope for any such adjudication upon a jurisdictional fact, the same, according to learned counsel, is ultra vires.

24. But, we are unable to accept the above submission. In Arunkumar, the Supreme Court was concerned with Rule 3 with particular reference to Section 17(2)(ii). As we have pointed out earlier, Section 17(2)(ii) did not make the mere allotment of a residential accommodation, as a perquisite. It was only the value of any concession in the matter of rent, that was made a perquisite under Section 17(2)(ii). Therefore, the Supreme Court rightly held that the grant of a concession in the matter of rent was a sine qua non, for the value of the same being treated as a perquisite.

25. But, we are considering Rule 3(7)(i), which is directly attributable to Section 17(2)(viii). Under Section 17(2)(viii), the Parliament has left it to the wisdom of the Rule Making Authority, to prescribe the value of any other fringe benefit or amenity, as a perquisite. Section 17(2)(viii) does not use any expression similar to the expression 'concession' as used in Section 17(2)(ii). The only sine qua non for the invocation of Section 17(2)(viii) is the existence of a fringe benefit or amenity. Even if the existence of a fringe benefit or amenity is

taken to be a jurisdictional fact, the Rule Making Authority, by prescribing the exact method of valuation of the fringe benefit, did not leave any fact in issue requiring adjudication by the Assessing Officer.

26. In other words, instead of leaving it to the individual wisdom (or the lack of it) of the Assessing Officers to find out whether something is a concession or not under Section 17(2) (ii), the Rule Making Authority prescribed under Rule 3(7)(i) a definite indicia for finding out the value of the fringe benefit.

27. Section 17(2)(ii) did not make the provision of any and every residential accommodation as a perquisite. It made only a concession in the matter of rent as a perquisite. Therefore, there was a need for adjudication. On the contrary, the Parliament made any fringe benefit or amenity as prescribed by the Rule Making Authority, as a perquisite, leaving no scope for any adjudication. The method of valuation is prescribed by Rule 3(7)(i). Therefore, the decision in Arunkumar has no bearing upon the constitutional validity of Section 17(2)(viii) or Rule 3(7)(i).

28. Apart from the fact that the first ground of attack is legally untenable, it also defies logic. By contending that the question about the interest free or concessional loan granted to them is a jurisdictional fact and that the same should be allowed to be adjudicated individually before the Assessing Officers, the petitioners have taken a stand that the arbitrary exercise of power by the Law Enforcing Authorities is acceptable to them, but the prescription of a standard formula by the Executive for avoiding arbitrariness and for ensuring uniformity is not acceptable to them. This is why their contention is unacceptable to us.

SECOND GROUND OF CHALLENGE :

29. The second ground of challenge is that the Rule is violative of Article 14, since it seeks to treat unequals as equals, by pegging the rate of interest charged by the individual banks on the loans advanced to their employees, with the rate of interest offered by the State Bank of India, without realising that each bank fixes its own rate of interest depending upon the economies of their operation.

30. In order to drive home the above point, Mr.Srinath Sridevan, learned counsel for the petitioners brought to our attention the Notification dated 9.4.2010 issued by the Reserve Bank of India and the Master Circular dated 31.7.2015, which

show that the rate of interest fixed by a bank need not be uniform and that each bank is free to choose a base rate. The formula for computation of base rate as provided in the Master Circular shows that the base rate would depend upon (i) Statutory Liquidity Ratio (ii) Cash Reserve Ratio (iii) Net Profit of the Bank and (iv) Net Worth of the Bank. The Master Circular excludes from the purview of application of the base rate, the loans granted to the employees of banks. Therefore, it is contended on the basis of the decisions of the Supreme Court in K.T.Moopil Nair Vs. State of Kerala [1961 (3) SCR 552] and Ashirwad Films Vs. Union of India [2007 (6) SCC 624] that the comparison sought to be made with the rate of interest charged by the State Bank of India, offends Article 14, by treating unequals as equals.

31. It is no doubt true that a taxing statute is not wholly immune from challenge on the ground of violation of Article 14, as held by the Supreme Court in K.T.Moopil Nair. But, what was under challenge before the Supreme Court in K.T.Moopil Nair was, the validity of imposition of a land tax at a flat rate of Rs.2/- per acre, on all lands, irrespective of the nature and quality of the land. Therefore, the Supreme Court held (i) that a classification of persons or properties into different categories, which are subjected to different rates of taxation with reference to income of property, will not be vulnerable to attack on the basis of Article 14 (ii) that if different kinds of properties are subjected to different rates of taxation, but on a rational basis, the same would not be violative of Article 14 and (iii) that if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst the holders of the same kind of property.

32. But in the case on hand, neither Section 17(2)(viii) nor Rule 3(7)(i) seek to treat unequals as equals. This can be seen by taking a hypothetical situation. Let us take for instance that the interest charged by the State Bank of India on a housing loan granted to its employee is 10%. If the rate of interest charged by Indian Bank for a similar loan is 8%, the difference between the two, namely 2% is treated by Rule 3(7)(i) as a perquisite, to be included as part of the salary at the hands of the Indian Bank employee. The consequence of such inclusion would be that the tax payable by the Indian Bank employee would go up by 10 - 30% of that difference namely 2%, depending upon the bracket of income, to which, the employee belongs.

33. Suppose an employee of the Canara Bank is charged interest at the rate of 7%, on a housing loan, the value of the perquisite, for the purpose of Rule 3(7)(i) will be taken to be

3% (difference between SBI rate of 10% and the Canara Bank rate of 7%). As a consequence, the tax payable may go up by 10 - 30% of the aforesaid difference of 3%.

34. Therefore, it is clear that the impact of Rule 3(7)(i) will not be the same on all categories of employees, but would differ from person to person depending upon the income bracket, to which, he belongs and the rate of interest, at which, he is granted a loan by his employer. Hence, the vice sought to be removed in K.T.Moopil Nair is not present in this case.

35. In so far as Ashirwad Films is concerned, what was challenged before the Supreme Court was a Notification issued by the Government of Andhra Pradesh levying different rates of entertainment tax upon the films made in different languages. The time honoured tests of (i) the existence of reasonable classification and (ii) the existence of a nexus between the classification and the object sought to be achieved, were applied by the Supreme Court in Ashirwad Films.

36. We do not know how the petitioners pitch their claim on the basis of Article 14. Rule 3(7)(i) does not seek to include an interest free or concessional loan taken by one set of employees to the exclusion of others. The Rule does not also stipulate different methods of valuation of the perquisite. It does not seek to apply a uniform rate for different categories of persons irrespective of the huge difference in their pay pockets. Therefore, we are surprised as to how a ground of attack on the basis of Article 14 is raised.

37. If the employees of different banks, who are before us, are in enjoyment of an interest free or concessional loan, paying different rates of interest such as 6%, 7% or 8%, what is sought to be included in their salaries under Rule 3(7)(i), is only the difference between the rate of interest charged by the State Bank of India in respect of loans for the same purpose and the interest actually charged by their employer. Therefore, Rule 3(7)(i) does not even make a classification between different categories of employees or between employees of different banks.

38. The petitioners cannot compare themselves with the employees of the State Bank of India, to contend that there is discrimination. If at all, it is the employee of the State Bank of India, who can perhaps raise an argument that they are suffering a handicap in the form of a higher rate of tax. This will be clear from the example that we have given in paragraphs 32 and 33. If the State Bank of India charges interest at 10% per annum on the loans advanced to its employees and another bank charges 7% per annum on the loans advanced to its employees, then the employees of the State Bank of India end up

paying more in the form of interest than their counterparts in other banks. The employees of other banks end up paying income tax at the rate of 10 - 30% on the differential interest of 3% (between the SBI rate and the rate charged by their employer). Therefore, the attack on the basis of Article 14 is completely meaningless.

THIRD GROUND OF CHALLENGE :

39. The third ground of challenge is that the Rule works out a great hardship to the employees and that hardship is a ground on which a subordinate legislation can be tested.

40. This argument completely lacks merit. A common man, either in business or in profession or in any employment other than in the banking sector, pays a higher rate of interest on the loan taken by him from a bank. But, by virtue of being an employee of the bank, if such employee receives an interest free or a concessional loan, then he is in enjoyment of a privilege. It is that privilege, which is sought to be taxed under Rule 3 (7) (i). If converted into monetary terms, what is taxed at the hands of the employee, at the maximum, is about 30% of that privilege, which he enjoys as an extra benefit on account of being an employee of the bank. In other words, Rule 3(7)(i) causes a dent in the value of the privilege given to an employee by an employer, perhaps to the maximum extent of about 30%. This can never be considered as a hardship. Therefore, the third ground of challenge is also liable to be rejected.

FOURTH GROUND OF CHALLENGE :

41. The fourth ground of challenge is that Rule 3(7)(i) is vitiated in as much as it tends to overrule the judgment of the Supreme Court in Arunkumar.

42. It is the contention of Mr.Srinath Sridevan, learned counsel for the petitioners that the Legislature cannot annul the judgment of a court. In support of this contention, the learned counsel places reliance upon the decisions of the Supreme Court in State of Tamil Nadu Vs. State of Kerala [AIR 2014 SC 2407] and S.T.Sadiq Vs. State of Kerala [2015 (4) SCC 400].

43. But, we completely fail to understand as to how Rule 3 (7) (i) can be said to have been brought into force with a view to overreach the judgment of the Supreme Court in Arunkumar. The judgment of the Supreme Court in Arunkumar was delivered on 15.9.2006. The decision arose out of a challenge to the validity of Rule 3 of the Income Tax Rules, 1962 and Section 17(2)(ii) of the Income Tax Act, 1961. The original cases were actually filed

by the employees of Tata Iron and Steel Company Limited before the High Court of Jharkhand, challenging a Notification bearing No.S.O.940(E) dated 25.9.2001. By this Notification, Rule 3 of the Income Tax Rules stood amended.

44. As we have indicated in paragraph 12 above, Rule 3 has undergone sweeping changes within a period of three years. Prior to 1.4.2001, Rule 3 merely contained Clauses (a) to (g). With effect from 1.4.2001, a new Rule 3 was substituted under the Income Tax (22nd Amendment) Rules, 2001. Under this amendment, which came into effect from 1.4.2001, seven Sub-Rules were inserted under Rule 3 with each Sub-Rule again being sub-divided into several Clauses with Provisos. These amended Rules, which came into effect from 1.4.2001, have already been extracted in paragraph 13 above. Thereafter, Sub-Rule (7) of Rule 3 underwent a further amendment under the Income Tax (First Amendment) Rules, 2004 with effect from 1.4.2004.

45. What is now under challenge is Clause (i) of Sub-Rule (7) of Rule 3 that was incorporated with effect from 1.4.2004 under the Income Tax (First Amendment) Rules, 2004. But, the decision in Arunkumar, as we have pointed out earlier, was rendered on 15.9.2006, much after the Rule came into force. Therefore, the contention that the Rule was inserted to overreach the decision in Arunkumar defies chronology of events. Hence, the fourth ground of attack to the impugned provisions is also liable to be rejected.

46. Placing reliance upon the decision of the Supreme Court in V.M. Salgoacar Vs. CIT [(2000) 160 CTR 225], it was contended by both Mr. Srinath Sridevan and Mr.N.G.R.Prasad, learned counsel appearing for the petitioners that the charging of any interest or the charging of interest on a concessional rate, may not amount to a benefit for the purpose of Section 17(2)(iii).

47. But, Salgoacar arose at a time when Section 17(2) had not been completely revamped. Salgoacar arose out of an interpretation that was necessitated in the light of the express language of the provision as it stood then. But, in this case, we are concerned with the validity of the Act and the Rules. Salgoacar will not be of any assistance to test the validity of the statutory provision or the Rules.

48. Relying upon the decision of the Supreme Court in Herbertsons Ltd. Vs. Workmen [1976 (4) SCC 736], it is contended by Mr.N.G.R. Prasad, learned counsel appearing for one of the petitioners that the quantum of salary fixed and the amenities

granted to the employees under a settlement, have to be looked at as a package. In paragraph 21 of the said decision, the Supreme Court observed that settlement has to be taken as a package deal.

49. More than helping the petitioners, the said decision helps the respondent - Department. If salary is taxable and some perquisite or benefit forms part of a package, the same should also be taxed. Therefore, we are of the considered view that the challenge to Section 17(2)(viii) as well as Rule 3(7)(i) has to fail.

50. As a consequence, all the above writ petitions are dismissed as devoid of any merits. Consequently, all connected pending MPs are also dismissed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Union of India, Ministry of Finance,
New Delhi.
- 2.The Central Board of Direct Taxes, North Block,
New Delhi-1.
- 3.The Chief Commissioner of Income Tax,
Ayakar Bhavan, Chennai-34.
- 4.Union Bank of India, Nariman Point, Mumbai-21.
- 5.The Managing Director, Lakshmi Vilas Bank, Administrative
Office, Kathapara, Karur-6.
- 6.Catholic Syrian Bank, Administrative Office,
CSB Bhavan, Thrissur.
- 7.Catholic Syrian Bank, Circle Office, Chennai-10.
- 8.The Dhanalakshmi Bank Limited, the Round, Naicknal, Trichur.
- 9.The Dhanalakshmi Bank Limited, Zonal Office, Chennai-2.
- 10.The Chairman, Federal Bank Limited, Regl. Office, Aluva,
Kerala State.
- 11.The Regional Officer, The Federal Bank Limited,
Royapettah, Chennai-14.
- 12.South Indian Bank, Head Office, Trissur, Kerala State.
- 13.South Indian Bank, Regional Office, Chennai-34.
- 14.The CMD, Vijaya Bank, Bangalore-1.
- 15.Vijaya Bank, Regional Office, Chennai-8.

- 16.The Chairman, State Bank of India,
Corporate Centre, Mumbai.
- 17.The CMD, Syndicate Bank, Corporate Office, Bangalore-9.
- 18.The Field General Manager, Syndicate Bank, Chennai-1.
- 19.The CMD, Punjab National Bank, Head Office, New Delhi-66.
- 20.The Circle Head, Regional Office, Punjab National Bank,
Chennai-2.
- 21.The CMD, Canara Bank, Bangalore-2.
- 22.The Regional Head, Canara Bank, Teynampet, Chennai-18.
- 23.The CMD, Corporation Bank, Mangalore-1.
- 24.The CMD, Central Bank of India, Mumbai-21.
- 25.The Regional Head, Central Bank of India, Egmore, Chennai-8.
- 26.The CMD, Oriental Bank of Commerce, New Delhi-1.
- 27.The Regional Head, Oriental Bank of Commerce, Chennai-2.
- 28.The CMD, Indian Bank, Chennai-14.
- 29.The CMD, Allahabad Bank, Head Office, Kolkatta-1.
- 30.The CMD, Bank of Maharashtra, Lok Mangal, Pune-5.
- 31.The CMD, Union Bank of India, Mumbai-21.
- 32.The CMD, Vijaya Bank, Bangalore-1.
- 33.The Chairman, Punjab & Sind Bank, New Delhi-8.
- 34.The CMD, Andhra Bank, Head Office, Hyderabad-4.
- 35.The CMD, Dena Bank, Dena Corporate Centre, Mumbai-51.
- 36.The CMD, UCO Bank, Kolkatta-1.
- 37.The CMD, United Bank of India, Kolkatta-1.
- 38.The CMD, State Bank of India, Mumbai-21.
- 39.The CMD, IDBI Bank Ltd., Mumbai-5.
- 40.The CMD, Syndicate Bank, Corporate Office, Bangalore-9.
- 41.The Regional Head, Corporate Bak, Royapattah,
Chennai 600 014.

+ 1 cc to M/s. T.S. Gopalan & Co., Advocate SR.24312

+ 12 CCs to M/s.Srinath Sridevan, Advocate SR NO 24703[23/06/16]

WP.No.7869 of 2008 etc.
cases

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