IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.7553 of 2017

C.A.George ... Petitioner

Versus

1 The Union of India
rep. by the Principal Chief Commissioner of Income Tax
121 Mahatma Gandhi Road
Nungambakkam Chennai - 600 034.

2 The Joint Commissioner of Income Tax (Headquarters) (Admn)
121 Mahatma Gandhi Road
Nungambakkam Chennai - 600 034.

3 The Registrar
Central Administrative Tribunal
Madras Bench High Court Buildings
Chennai- 600 104. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order of the third respondent in O.A.No.1064/2016/ dated 29.11.2016 and the order of the second respondent in C.No.581 (5) / C.8/11/SAF/2016/17 dated 05.05.2016 and quash the said orders and direct respondents 1 and 2 to refund the amount recovered from the petitioner with interest.

For petitioner : Mr.Lakshmi Narasimhan for Mr.P.Rajendran

For RR1 and 2 : Mr.M.T.Arunan

R3 : Tribunal

ORDER

(Order of the court was made by HULUVADI G.RAMESH,J.)

Heard the learned counsel appearing for the parties.

2. It appears that the writ petitioner, while he was working as Stenographer in the Income Tax Department, had been allotted a type IV official quarters SAF Village, Koyambedu, Chennai with a rent of Rs.635/- per month, on 8.3.2007, in a special drive to fill up such type of quarters by the Department though the petitioner was entitled only to type III quarters, of course, without any condition that he should be in a position to vacate the same as and when required by the Department. The writ petitioner retired from service as Senior Private Secretary to the Principal Commissioner of Income tax-IX on 30.11.2016. In the meantime, it appears that on 19.10.2012, he was directed to vacate the quarters due to its shortfall and on his representation, the matter was not harped on by the Department, however, in the year 2014, he was allotted a type III quarters at Anna Nagar, Chennai and he was directed to occupy the same and once again, the petitioner had represented for retention of the quarters occupied by him on the ground of his son's education. But, it appears that the same was rejected and treating his occupation of the quarters as unauthorised one, he was charged with 40 times the regular rent and thereby, a sum of Rs.25,400/- was recovered from him for the month of April and May 2014. It was challenged by the petitioner before the Central Administrative Tribunal in O.A.No.744 of 2014 and the Tribunal, while disposing of the said Application, directed for sympathetic consideration of the case of the petitioner. The petitioner had to once again approach the Tribunal with the present application viz., O.A.No.1064 of 2016 since his case was rejected by the Department and stating that he is liable to pay a sum of Rs.5,33,400/- as damage rent for the period from 1.4.2014 to 31.12.2015 (21 months). Having failed to succeed before the Tribunal on the second occasion, the petitioner is before us.

3. The learned counsel appearing for the petitioner submits that it is not at all a case of overstay in the quarters, but, it is only because of the fact that his son was studying in the nearby school and he was engaged in some special coaching classes in the nearby coaching centre at the relevant point of time. It is his further submission that he was not properly appraised of the fact that he was being allotted a quarters which is one level higher than his entitlement and he would have to vacate the same as and when required by the Department and therefore, the period of his stay that too during his tenure of service, need not be treated as unauthorised one to charge such an exorbitant rent of Rs.5,33,400/- for a period of 21 months

and sought for return of the recovery already made by the Department towards damage rent.

4. On perusal of the materials placed before us, we find that it is not the case of the Department anywhere that the petitioner had insisted for type IV quarters, which is one level higher than his entitlement and such allotment is only at the instance of the Department viz., as a special drive to fill up the vacancies in such type of quarters that too without giving any warning signal at the time of allotment that the employee should be in a position to vacate the same as and when required by the Department. On the first occasion, viz., in the month of October 2012, when the petitioner was directed to vacate the quarters due to its shortfall, it appears that the matter was kept in abeyance on the representation of the petitioner, however, the issue was once again raised in the year 2014 by way of allotting a type III quarters at Anna Nagar which was refused a request for retention of the type IV quarters was made by the petitioner on the ground of his son's education. It also appears that already in the year 2015, the petitioner had vacated the quarters in dispute, on completion of the present course by his son.

5. In view of the above facts and circumstances, we are of the view that the period specified by the Department as overstay by the petitioner, especially, during his tenure of service, cannot at all be treated as overstay and therefore, it will not be fair on the part of the Department to charge such exorbitant rent of 40 times the regular rent. Therefore, while setting aside the order dated 29.11.2016 passed by the Central Administrative Tribunal in O.A.No.1064 of 2016 and also the order dated 5.5.2016 passed by the second respondent and thereby quashing the penalty rent imposed to the tune of Rs.5,33,400/-, we direct the respondent-authorities to re-consider the issue sympathetically, by giving an opportunity of hearing to the writ petitioner and take a decision within a period of three months from the date of receipt of copy of this order, for which, the petitioner shall extend his co-operation. The writ petition is disposed of accordingly. No costs.

Sd/-

Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

ssk.

To:

1 The Principal Chief Commissioner of
Income Tax, Union of India
121 Mahatma Gandhi Road
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Income Tax (Headquarters) (Admn)
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3 The Registrar
Central Administrative Tribunal
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Chennai- 600 104.

+ 1 cc to Mr.P.Rajendran Advocate,SR.84271

+ 1 cc to Mr.M.T.Arunan Advocate,SR.83537

W.P.No.7553 of 2017

sv(co)
nr 05/01/2018