IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.19091 to 19093 of 2009

and Writ Petition Nos. 4551 & 4552 of 2008

Writ petition No.19091 of 2009:

1. B.Sriramachandra Murty
2. S. Raghavan
3. A. Gopala Krishna Rao
4. Chandramouli
5. K Shantharam Pai ...Petitioners

Vs.

1. Central Board of Direct Taxes, Department of Revenue
Ministry of Finance, Government of India,
North Block, New Delhi represented by its Chairman.

2. Bharat Sanchar Nigam Ltd., Corporate Office,
Bharat Sanchar Bhawan Harish Chandra Mathur Lane,
Janpath, New Delhi - 110 001,
represented by its Chairman & Managing Director.

3. Department of Telecommunications,
Ministry of Communications and IT,
Sanchar Bhawan, Ashoka Road, New Delhi - 110 001.
Represented by its Secretary.

4. Union of India, represented by its Secretary,
Ministry of Finance, North Block,
New Delhi - 110 001.

5. The General Manager Finance
Tamil Nadu Telecom Circle,
Bharat Sanchar Nigam Ltd.,
80, Anna Salai, Chennai - 600 002.

6. The General Manager Finance,
   Chennai Telephones,
   Bharat Sanchar Nigam Ltd.,
   78, Purusaiwakkam High Road,
   Chennai - 600 010.

7. The General Manager Finance,
   Southern Telecom Projects,
   Bharat Sanchar Nigam Ltd.,
   25, Green ways Lane,
   R.A. Puram Chennai - 600 028.

8. The General Manager Finance,
   Southern Telecom Region,
   Bharat Sanchar Nigam Ltd.,
   No.11, Link Road, Ganapathy Colony,
   Guindy, Chennai - 600 032. ... Respondents

Prayer in W.P.No.19091 of 2009: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in F.NO.275/67/2007-IT(B) dated 12.11.2007 and quash the same and consequently forbear the respondents from deducting tax as perquisites for the house accommodations provided for the petitioners by the 3rd respondent.

Writ petition No.19092 of 2009

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Prayer in W.P.No.19092 of 2009: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to refund the tax deducted unauthorized from the petitioners in terms of order dated 12.11.2007 passed by the first respondent in F.NO.275/67/2007-IT (B) dated 12.11.2007.

Writ petition No.19093 of 2009

1. B.Sriramachandra Murty
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Prayer in W.P.No.19093 of 2009: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of declaration to declare that the first respondent is not competent to decide the status of the petitioners as a non Central Government employees which is ultra virus and unconstitutional.

Writ petition No.4551 of 2008

1. D. Bhaskara Rao
2. K.V. Balasubramanian
3. H. Mohamed Abubacker

4. A. S.Egaya
5. Francis Jacob
6. A. Ganesan
7. Geetha Godwin
8. S. Krishnan
9. V. Malini
10. K. Muthusamy
11. N. R. Natarajan
12. S.E. Rajam
13. T. Rajendran
14. V.K. Sanjeevi
15. K.V.V. Satyanarayana
16. G. Satyanarayana Reddy
17. T. Sethumadhavan
18. S. Shanmuga Sundaram
19. A. Shajahan
20. T.R. Shaji
21. M.K. Sudarsanam
22. P. Sudhakar Rao
23. J. Tatachari
24. R. Thirunavakkarasu
25. K. S. Venkatasubramanian
26. Momidi Venaiah
27. D. Sivaraj
28. Atul Kumar Kareliya
29. G. Adam
30. E. S. Chandrasekar
31. Janardan
32. N. Poonguzhali
33. R. Purushothaman
34. Rajasekar
35. B. Ravikumar
36. S. Ravikumar
37. Sathya Priyadarshini
38. C. Suja
39. M. Muralikrishna
40. T. Natrajan ...Petitioners

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Prayer in W.P.No.4551 of 2008: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to refund the tax deducted unauthorized from the petitioners in terms of order dated 12.11.2007 passed by the first respondent in F.No.275/67/2007 - IT(B)dated 12.11.2007.

Writ petition No.4552 of 2008

1. D. Bhaskara Rao
2. K.V. Balasubramanian
3. H. Mohamed Abubacker
4. A. S.Egaya
5. Francis Jacob
6. A. Ganesan
7. Geetha Godwin

8. S. Krishnan
9. V. Malini
10. K. Muthusamy
11. N. R. Natarajan
12. S.E. Rajam
13. T. Rajendran
14. V.K. Sanjeevi
15. K.V.V. Satyanarayana
16. G. Satyanarayana Reddy
17. T. Sethumadhavan
18. S. Shanmuga Sundaram
19. A. Shajahan
20. T.R. Shaji
21. M.K. Sudarsanam
22. P. Sudhakar Rao
23. J. Tatachari
24. R. Thirunavakkarasu
25. K. S. Venkatasubramanian
26. Momidi Venaiah
27. D. Sivaraj
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30. E. S. Chandrasekar
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Prayer in W.P.No.4552 of 2008: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in F.No.275/67/2007 - IT(B) dated 12.11.2007 and quash the same and consequently forbear the respondents from deducting tax as prequisites for the house accommodations provided for the petitioners by the 3rd respondent.

For Petitioner [in all W.Ps] : Mr. S.R.Sundar

For Respondents [in all W.Ps.] : Mrs. Hema Muralikrishnan
Senior Standing Counsel for RR1, 3, 4
Mr.K.R. Ramesh kumar
Standing Counsel for BSNL for RR2, 5 to 8

C O M M O N   O R D E R

W.P.Nos.19091 to 19093 of 2009 & W.P.Nos.4551 & 4552 of 2008:

Five writ petitions are before me. In W.P.No.19091 of 2009, there are five writ petitioners the second of whom, one Mr.S.Raghavan, is stated to have retired as on date. In these writ petitions, the petitioners seek a certiorarified mandamus quashing order dated 12.11.2007 passed by the Central Board of Direct Taxes (CBDT/R1) and forbearing the respondents from deducting tax as perquisite tax in respect of the residential accommodation provided by the 3rd respondent i.e., Department of TeleCommunication (DOT/R3).

2. In W.P 19092 of 2009, arraying 5 petitioners, W.P.No.19093 of 2009, arraying 5 petitioners, W.P.No.4551 of 2008, arraying 40 petitioners and W.P.No.4552 of 2008, arraying 40 petitioners, the array of respondents is identical to the above writ petition and the prayer in the Writ Petitions is for a mandamus directing the respondents to refund the tax deducted by Bharat Sanchar Nigam Limited (BSNL/R2) in terms of CBDT order dated 12.11.2007.

3. Mr.S.R.Sundar, learned counsel for all petitioners, Mrs.Hema Muralikrishnan, learned counsel appearing for the CBDT/R1 and DOT/R3 and Mr.K.R.Ramesh Kumar, learned Standing counsel for BSNL have been heard.

4. The petitioners are Group -A officers under the cadre of Indian Telecom Services (ITS) employed in various posts in the Department of Telecommunication, Government of India. BSNL was incorporated in the year 2000 under the administrative control of the DOT. On its incorporation, the ITS officers employed with the DOT appear to have been transferred enmass to BSNL, on deemed deputation basis. These officers have been provided unfurnished houses as accommodation. According to the petitioners, the houses are owned by DOT and the petitioners are in occupation of the same till date.

5. The issue in these writ petitions concerns the deduction of tax at source on perquisites. According to the petitioners, the unfurnished residential housing accommodation provided to them is owned only by the DOT and has not been transferred to BSNL. This is disputed by respondent nos.2,5,6,7 and 8 in counter filed in W.P.No.19091 of 2009. Moreover the petitioners point out that, as per the decision of the Delhi High Court

(referred to later in this decision) the petitioners have been extended an option as to whether they would prefer to revert to the DOT or to seek permanent absorption in BSNL.

6. The determination of 'employer', whether Central or State Government or Private, is relevant to fix the valuation of the accommodation given as perquisite. R1 has issued a clarification to the effect that the value of the accommodation provided to the petitioners is a perquisite liable to deduction of tax at source. Though the Circular is challenged in a few Writ Petitions, the challenge is per se, not pursued.

7. The valuation of perquisite accommodation in terms of the provisions of Section 17(2) and Rule 3 of the Income Tax Rules 1962 would vary with whether the employer would be BSNL or the Central/State Government. Before me this position in law is not disputed. However, the stand of the petitioners is that they continue to be employees of DOT only insofar as several of them have not opted for/accepted the change of employer/employment.

8. A learned single Judge of the Delhi High Court in the case of India TeleCom Service and Ors Vs. Union of India in several writ petitions and batch (W.P.Nos. 22515 to 22518 of 2005 and batch) considered a challenge to the deputation of concerned officers employed with DOT by transfer to BSNL. In a batch of writ petitions challenging the order passed by the Central Administrative Tribunal, Delhi, the learned Single judge held as follows:

> "i) The deemed date of absorption of the petitioners fixed as 1.10.2000, is held to be illegal, being contrary to Rule 37-A(4) of CCS (Pension) rules;
>
> ii) The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005;
>
> iii) The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;
>
> iv) Those Government servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order;

v) BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;

vi) Such of the petitioner who opt to revert to the Government shall be appropriately redeployed by the Government in Government Service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and, subject to availability of the positions with it, give them such work as is deemed appropriate to be performed by them."

9. This order is stated to have attained finality, though not complied with by the respondents therein. Petitions for contempt are also stated to be pending.

10. The petitioners have thus been extended an option, to be exercised within two weeks from date of receipt of that order, confirming whether they wished to seek permanent absorption in BSNL or revert back to the DOT. The exercise of such option and the consequential determination of their employer will decide the valuation of the housing accommodation and resultant levy of perquisite tax. This is a question of fact to be determined in the case of each petitioner and none of the learned counsels are in a position to confirm whether and which of the petitioners' have exercised the option as above.

11. In the light of this factual embargo, W.P.No.19091 of 2009 is dismissed. The concerned respondents will give effect to this order in the case of each petitioner after hearing him/her, within a period of six(6) weeks from date of receipt of a copy of this order.

12. W.P.Nos.19092, 19093 of 2009, 4451 and 4552 of 2008 are disposed. Connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman
   Central Board of Directo Taxes, Department of Revenue
   Ministry of Finance, Government of India,
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3. The Secretary,
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4. The Secretary,
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+6cc to Mr.K.Moorthy, Advocate Sr.99030, 99026, 99027
+1cc to Mrs.Hema Muralikrishnan, Advocate Sr.98876
+3cc toMr.K.R.Rameshkumar, Advocate Sr.99283, 99281, 99282

Writ Petition Nos.19091 to 19093 of 2009

and W.P.Nos. 4551 & 4552 of 2008

rp[co]

srg 04/02/2020