IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.25409 of 2022
and
W.M.P. Nos.24390 and 24391 of 2022

1.NLCIL Graduate Engineers' Association,
Rep. By its President, A.KR.Saravanabhavan,
Thanthai Periyar Road, Block-11,
Neyveli-607 803.

2.A.Balaji Suresh

3.NLC Engineers' Association,
Rep. By its President, M.Ganesan,
Bangalore Road, Block-17,
Neyveli-607 801.

4.K.Annadurai

5.NLC National Graduate Engineers' Association,
Rep. By its President, T.Martin,
No.D-15, K.N.Subbaraman Salai,
Block-19, Neyveli-607 803.

6.G.Natarajan

7.NLC Officers' Association
Rep. By its President, C.Venkatraman,
E-47, Zakir Hussain Road,
Block-16, Neyveli-607 801.

8.S.Gnanaraj ... Petitioners

Vs.

1.Government of India,
Ministry of Finance,
Income Tax Department,
Rep. By Chief Commissioner of Income Tax (TDS),
Room No.316, 3rd Floor, Chennai-600 034.

2.NLC India Limited,
(Formerly Neyveli Lignite Corporation),
(Navaratne- A Government of India Enterprise),
Rep. By its Executive Director (Finance),
Corporate Office, Block-1, Neyveli-607 801. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring the action of the 2nd Respondent in deducting income tax to petitioners members on 'perquisite' on the ground that they are providing quarters as illegal and without jurisdiction under Section 17(2) of the Income Tax Act, 1961 and Rule 3 of the Income Tax Rules, 1962.

For Petitioners	: Mr.N.G.R.Prasad Senior Advocate
For Respondents	: Dr.B.Ramaswamy Senior Standing Counsel (for R1) Mr.N.Nithianandam (for R2)

ORDER

The present writ petition is filed praying for a Writ of Declaration declaring the action of the 2nd Respondent in deducting income tax to the petitioners' members by treating the accommodation provided to the petitioners as a “perquisite” in terms of Section 17(2) of the Income Tax Act, 1961 and Rule 3 of the Income Tax Rules, 1962, is illegal and without jurisdiction.

2. It is submitted by Mr.N.G.R.Prasad, learned counsel for the petitioners that NLCIL provides accommodation at a standard rate and the accommodation so provided is neither free nor at a concessional rate. On the strength of the same, it was submitted by the learned counsel for the petitioners that in terms of Section 17(2) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) to constitute perquisite the accommodation must either be free or at a concessional rate. In the absence thereof, it would not constitute perquisite and any deduction of TDS would not be in accordance with law.

3. The learned counsel for the Respondents would submit that only in view of the communication dated 23.02.2022 wherein in response to the query as to whether accommodation which is provided to its employees would constitute perquisite, the Office of the Chief Commissioner of Income Tax (TDS) has passed an order dated 23.02.2022, wherein it was clarified as under:

> *“.......Hence, if the value of such accommodation so determined does not exceed the rent recovered from the employee, the said accommodation owned and provided by the employer to its employees will not constitute a perquisite in terms of Section*

17(2) of the Income Tax Act, 1961, so long as the conditions are satisfied."

5. It was pointed out to the learned Senior Standing Counsel for the 1st Respondent that the conclusion or the operative portion of the said communication lacks clarity. It was then submitted by the learned Senior Standing Counsel for the 1st Respondent that the order may be set aside and they would reconsider the representation if any made by the petitioners and the 2nd Respondent.

6. In view thereof, the petitioners and the 2nd Respondent are at liberty to submit a fresh representation on the above issue viz., whether accommodation provided by NLCIL to its employees would constitute "perquisite" within the meaning of Section 17(2) of the Act. If any such representation is made, the same shall be considered by the 1st Respondent and appropriate clarification shall be issued within a period of 4 weeks from the date of receipt of such representation after affording reasonable opportunity of hearing to the petitioner and any other interested persons/stake holders,. It is made clear that this Court has not expressed any views with regard to the merits of the representation and it is open to the concerned respondent to consider the representation on its own merits and

in accordance with law.

7. With the above directions, the writ petition is disposed of. Consequently, the connected miscellaneous petitions are closed. No costs.

11.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
1.The Chief Commissioner of Income Tax (TDS),
Government of India, Ministry of Finance,
Income Tax Department,
Room No.316, 3rd Floor, Chennai-600 034.

2.The Executive Director (Finance),
NLC India Limited,
(Formerly Neyveli Lignite Corporation),
(Navaratne- A Government of India Enterprise),
Corporate Office, Block-1, Neyveli-607 801.

MOHAMMED SHAFFIQ, J.

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