
(2003) 12 CAL CK 0049

Calcutta High Court

Case No: Writ Petition No. 1308 of 2001

Corporation Bank
Officers" Organisation
and Others

APPELLANT

Vs

Corporation Bank and
Others

RESPONDENT

Date of Decision: Dec. 16, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 17, 17(2)

Citation: (2004) 192 CTR 334 : (2004) 269 ITR 222

Hon'ble Judges: Kalyan Jyoti Sengupta, J

Bench: Single Bench

Advocate: R.K. Murarka, for the Appellant; D.K. Shome and S. Pal, for the Respondent

Final Decision: Allowed

Judgement

Kalyan Jyoti Sengupta, J.

By this application the petitioners being the Officers" Organisation of the Corporation Bank have challenged the taxability of the use of furniture at concessional hire rent. Under the direction of the Income Tax Department, the bank concerned has treated this use of the furniture to be a perquisite u/s 17(2)(iii) of the Income Tax Act, 1961. The admitted position is that under the service rules of the bank concerned, the officers, if so advised, may get the facilities and amenities of the use of the furniture to be supplied by the bank at a particular rate of hire charges. This rate has been fixed under the condition of employment at a sum equivalent to 2.05 per cent of the basic pay. Admittedly, in the event the aforesaid amenities are not availed of, then no monetary benefit is given to any of the employees in lieu thereof.

2. The affidavit-in-opposition filed by the bank factually says the furniture is supplied to the officers as a matter of course under the norms and convention at a rate much less

than the market rate. The facts and figures of the possible rate in the market have been given in respect of various furniture supplied to and placed at the disposal of the officer concerned for use.

3. Mr. Murarka, learned senior counsel appearing in support of the writ petition, submits that the rate of hire of furniture being charged by the employer has not been accepted judicially as being a concessional one so as to treat the same as perquisite under the aforesaid section. In support of his submission he has relied on a decision of the learned single Bench of this court, reported in [All India Vijaya Bank Officers' Association and Others Vs. Vijaya Bank and Others](#), . He contends that the aforesaid judgment was rendered following other decisions, viz., the Division Bench of this court as well as the decisions of the Madhya Pradesh and Andhra Pradesh High Courts. Those judgments are also cited in this case as part of his argument.

4. The judgment of the learned single judge was rendered, however, without hearing the Revenue or any of the respondents.

5. Since this law has been settled, this so called hiring charges of furniture allegedly at concessional rate cannot be brought under taxability.

6. Mr. Shome, learned senior counsel appearing for the respondents, submits that it is clear from the affidavit-in-opposition of the bank concerned that the value of the use of the furniture provided by the bank to its officers is certainly at a concessional rate and can be treated as "perquisite" for taxing. Therefore, there is nothing wrong under the law in this matter. He, therefore, contends that the judgment cited by Mr. Murarka is not applicable and the same is distinguishable on the facts. He further submits that the word "perquisite" used in the aforesaid section is an inclusive definition and the instances given therein are illustrative and no exhaustive definition is spelt out. He contends further than the concession is to be judged in the context of market letting out value of the furniture supplied.

7. I have heard the respective contentions of learned counsel for the parties. Firstly, I shall be dealing with the context of the factual aspect as made out in the affidavit-in-opposition by the bank as to whether the statements and averments expounding hiring rate made therein can be treated to be the value of concession within the meaning of Section 17(2) of the said Act or not for taxing as perquisite. In my view, the statement and averment of a particular litigant cannot change or alter the pronouncement of the court. In the judgment in [All India Vijaya Bank Officers' Association and Others Vs. Vijaya Bank and Others](#), cited by Mr. Murarka, it has been held that the furniture supplied at a particular hiring rate by the employer to the employee cannot be treated to be a concessional rate. In the affidavit-in-opposition it has merely been stated that had this furniture been taken on rent from the market, the rate could have been much higher. I think there is some fallacy in this averment and statement, as while adjudging the question of concessional rate comparable instances cannot be set up on hypothesis.

This fact and figure could have been relevant had it been the case that the bank concerned after having hired this furniture from the market at a higher rate supplied it to its employees at a lesser rent. There may be another instance where the bank as a matter of course is letting out in the market the furniture at a particular rate and then charging at a lower rate while letting out to its employees meaning thereby there is distinct and marked differentiation in the rate of hiring. There may be another instance where two different rates are being charged for hiring, inter se employees. None of the aforesaid cases is visualised nor spelt out in the affidavit in opposition.

8. Therefore, I think the concept of concessional rate is absolutely misplaced here. I do not find any reason to take any different view in this matter from what I had taken earlier in the case of [All India Vijaya Bank Officers" Association and Others Vs. Vijaya Bank and Others](#) .

Accordingly, the writ petition is allowed.

There will be a writ in terms of prayers, (a), (b) and (c) of the writ petition. No order is passed as to costs.

9. The undertaking given pursuant to the interim order shall stand discharged. Therefore, the affidavit-of-undertaking, if any, may be returned to the writ petitioner"s learned advocate-on-record.

10. Let a signed copy of this order be made available to the parties only after putting in requisition for drawing up and completion of the order and also for the xeroxed certified copy thereof.