



Claim for exemption in respect of House Rent Allowance rejected where rent paid by married daughter to her mother

Background

Salaried individuals who live in a rented house can claim exemption¹ under the Income-tax Act, 1961 (the Act) up to certain limits², in respect of House Rent Allowance (HRA) received by them.

Recently, the Mumbai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Meena Vaswani³ (the taxpayer) held that a claim for an exemption of House Rent Allowance (HRA) in respect of non-contractual payment of rent to a parent is not allowable.

Facts of the case

- The Assessing Officer (AO) during the course of assessment proceedings⁴ observed that the taxpayer was claiming both an exemption in respect of HRA and a loss from self-occupied house property during the Assessment Year (AY) 2010-11.
- In response to an enquiry from the AO, the taxpayer explained that she owned a joint property with her spouse, but had also paid rent to her mother, in cash, since she stayed with her mother, to take care of her. Given that the transaction was with her parent, no formal contract was executed, but rent receipts were duly collected.

¹ Under Section 10(13A) of the Act

² Minimum of actual HRA received; 50 percent of salary for those living in metro cities (40 percent for non-metros); actual rent paid less 10 percent of salary. 'Salary' for this purpose includes basic salary, dearness allowance, and commission based on a fixed percentage of turnover achieved by an employee as per terms of the contract of employment but excludes all other allowances and perquisites.

³ Meena Vaswani v. ACIT (ITA No. 1983 to 1985/Mum/ 2015) (Mum)

⁴ Under Section 143(3) read with Section 143(2) of the Act

- The AO rejected the exemption in respect of HRA on the following grounds:
 - Even if the rent was paid to a family member, the relation between the parties was a contractual relation and needs to be supported by documentary evidence to prove the same.
 - Payment of rent to a parent who was old and sick to meet day to day living cost does not entitle the assessee to claim exemption in respect of HRA.
 - An inspection carried out by the AO confirmed that the taxpayer was actually staying at the owned property and not at the rented property.
- Similar adjustments were also made for AY 2009-10 and AY 2011-12.
- On an appeal before the Commissioner of Income Tax Appeals [CIT(A)] against the orders passed by the AO, the contention of the taxpayer was rejected again.
- The taxpayer filed an appeal before the Tribunal against the orders passed by CIT(A).

Tribunal's decision

- The Tribunal considered the appeals in respect of all three AYs in question together.
- The arrangement of payment of rent by the taxpayer to her mother was considered a sham transaction in order to reduce tax liability.

- The Tribunal placed reliance on the Indian Evidence Act, 1872⁵, to hold that burden of proving a fact within the knowledge of a person, would be on him/her and he/she would need to be able to demonstrate all related facts, in this connection. Therefore, the onus lies on the taxpayer to prove that the payment of rent was a genuine transaction.
- The Tribunal set out certain instances of documentary evidence which could arise in the normal course of renting accommodation, which could have been produced by the taxpayer, but was not brought on record. These are as under:
 - Leave and licence agreement
 - Information about tenancy to building a society
 - Payments via banking channels
 - Cash payments backed by known sources/traceable to specific withdrawals
 - Utility bill payments through banking channels
 - Correspondence on tenancy
 - Disclosure of rental income in landlord's income tax return; and
 - Reasonableness of rent paid.
- Even disregarding the inspection carried out by the AO in this connection, the exemption was not allowable as the payments towards rent were not considered to be legitimate payments, as no substantive/cogent documentary evidence was placed on record to show the genuineness of the transaction and occupation of the rented premises by the taxpayer.
- Under these circumstances, the orders of the CIT(A) were confirmed, and the appeals were dismissed.

Our comments

This decision delineates the importance of maintaining sufficient documentary evidence for the claim of exemptions under the Act. Specifically, for exemption in respect of HRA, broad guidelines in order to prove the genuineness of the transaction have been laid down. Further, the decision also lays out that the onus of proving that the rental transaction is real would be that of the taxpayer.

Further, employers may consider incorporation of such guidelines in their withholding tax processes, in order to assess the claim of exemption of HRA, made by the employees.



⁵ Sections 6 and 106

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