



COAL MINES OFFICERS' ASSOCIATION OF INDIA

(Regd. No. - 11502 of W.B. Under the Trade Union Act, 1926)

Registered Office : UKHRA - 713363, DIST. BURDWAN (West Bengal)

Functioning from :- Shradhanjali Apartment, Burnpur Road, Asansol-713304

President

Shukdeo Narayan

Off. : 0326-2332620

Res. : 0326-2203004

Mob. : 94311-20558

Fax : 0326-2209264

Secretary General

K. P. Singh

Off. : 0651-2231471

Res. : 0651-3202919

Mob. : 94311-62684

Fax : 0651-2231501

Treasurer

Damodar Banerjee

Off. : 0341-2523576 - ext - 51!

Res. : 0341-2206438

Mob. : 94340-04005

18.02.2016

Ref. No. : CMOAI/Apex/ P.Tax/10/2014

Date :

To
The Hon'ble Finance Minister,
Ministry of Finance,
Govt. of India,
North Block,
New Delhi-110101

Sub.: **Unreasonable discrimination between Central/State Government employees and Public Sector employees as per the Income Tax Act under Section 17(2)**

Respected Sir,

We would like to draw your kind attention towards the Section 17(2) of the Income Tax Act 1961 (**annexed herewith as Annexure-I**) which is the charging section to levy tax on perquisites which includes rent free accommodation. In the year 2001 the CBDT for the purposes of valuation of perquisites amended Rule 3 of the Income Tax Rules (**annexed herewith as Annexure-II**) for perquisites and the employees were classified into two categories namely :

- (a) Government (Central and State) employees, and
- (b) Others.

This discrimination between the Government employees and the other employees was challenged in various High Courts by different groups on various grounds. The first ground on which this amendment was challenged was that the amended rule was ultra vires the Parent Act as it did not leave any scope for the assessee to show that there was no concession being availed and therefore it conferred unfettered power in the hands of the income tax officials.

The second and the most important ground for challenging this Rule was that the discrimination between the Government employees and the Public Sector employees is arbitrary and unreasonable and violative of **Article 14** of the

Constitution. This was finally decided by the Hon'ble Supreme Court of India in **Arun Kumar and others versus union of India**¹. It was held by the Hon'ble Court that in the absence of any deeming clause in Section 17(2) of the Income Tax Act, it would be unfair if the assessee is not given an opportunity to show that he is not availing any **concession** in the matter of rent. The Court was of the view that it is only when there is a "**concession**" in the matter of rent regarding any accommodation provided by an employer to his employee that the mode, method or manner as to how such **concession** can be computed arises. In other words, "**concession**" is a jurisdictional fact and was still open to the assessee to contend that there is no concession.

However, on the question of the discrimination between the Government employees and the Public sector employees, the Hon'ble Court was of the view that this classification is based on intelligible differentia which in this case is the difference between the benefits and salary of the Government employees and the public sector employees where the latter is better off. In other words Court was of the opinion that if two classes are situated differently, they should be treated differently. After this judgment, the Income Tax Act was amended and a deeming clause was added to section 17(2) for the purpose of determining what would constitute concession and has now left no room to the assessee to contend that he has not been availing any concession from his employer in matter of rent. Lastly the Income tax which is being levied here under the disputed section is on the Gross salary of the employee however the House Rent Allowance paid to an employee is calculated on the basic salary of the employee which is beyond any logical interpretation. **The employees availing rent free accommodation are paying additional income tax in the name of perquisite tax on the gross salary which includes Basic Pay + Dearness Allowance + Perks, and the Perquisite Tax is again being deducted on the Gross Salary of the employees. Thus employees availing Rent Free accommodation are the victims of double taxation on Gross Salary.**

The issue of concern that we want to raise by this letter is that the scenario has changed after the introduction of the **Sixth pay Commission** and there is no means by which we can say that the Public Sector employees are in a better situation than the Central Government employees and the State Government employees in terms of salary and the benefits being availed. Now both the categories of employees enjoy a similar, if not a better status and therefore the reason for classifying both of them differently by the Income Tax Act and supported by the judgment of the Supreme Court does not exist anymore. To satisfy that there has not been any unreasonable classification under Article 14 of the Constitution two grounds have to be satisfied :

(1) The classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out. In this case this very first ground to satisfy non violation of article 14 does not exist after the introduction of Sixth Pay Commission as now both the

¹The judgment was pronounced in the year 2006.

Government and Public Sector employees enjoy the same status in terms of salary and other benefits.

It was held in the case of ***Federation of Hotel and restaurant Association of India v Union Of India***² that the *Taxing statutes are not outside the purview of article 14 of the Constitution.* The Legislatures do exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. But, with all this latitude, certain irreducible desiderata of equality shall govern classifications for differential treatment in taxation laws as well. The classification must be rational and based on some qualities and characteristics which are to be found in all the persons grouped together and absent in the others left out of the class.

The question of the status of the Public Sector Undertakings was addressed in the ***126th Law Commission Report 1988*** wherein it was concluded that the Public Sector Undertakings are the instrumentalities of the state and would come under "other authorities" as per ***Article 12 of the Constitution*** that defines state. Public corporations, state holding companies and state controlled societies were chosen as the vehicles for translating Government's industrial policy into action oriented programme. ***Whatever garb they may wear, their life and soul, bone and blood, is the state itself.*** They are the limbs of the state and they exist for the sole purpose of running the huge apparatus of the state industry smoothly and efficiently in pursuit of the objectives of the state policy³. Therefore, when the Law Commission itself acknowledges the fact that the public sector undertakings are the limbs of the State and in the light of the fact that now both the Government employees and the Public sector employees enjoy the similar, if not a better status after the introduction of the Sixth pay Commission, there is absolutely no reason or ground for classifying them differently for taxing on the rent free accommodation as well as any concession in the matters related to rent. Therefore, this discrimination is illegal, unreasonable and arbitrary as it violates the essential spirit of Article 14 of the Constitution.

(2) The second ground to satisfy article 14 is that there should be a nexus between the object of the law and the classification being made therein. The nexus that was pointed by the Hon'ble Court in Arun Kumar's case was that the service conditions of Government employees are different than the Public sector employees. We would like to raise our contention on this ground itself that when it is being agreed that if two classes are situated differently they should be treated differently then what is the reason of keeping public sector undertaking employees and Private sector employees in the same category ?

² {1989} 1781TR97(SC) at page 121.

³ Law Commission Of India One Hundred twenty Sixth report On Government And Public Sector Undertaking Litigation Policy And Strategies 1988.


The service conditions, the salary drawn, the allowances being availed of etc. are completely different in both the categories. And, now in totality and for all practical purposes the service conditions enjoyed by the Government and Public Sector employees being more or less the same, the nexus does not exist between the object of the Act and the classification specially in the light of the fact that, since the classification does not satisfy the first criteria itself it is violative of Article 14 of the Constitution.

Last but not the least we are inviting your kind attention to the Judgment of the Supreme Court in Arun Kumar versus Union Of India where the Hon'ble Court refused to give any opinion on the fact that whether any deeming fiction could be created as to the concession in the matter of rent in certain circumstances and expressed in strong words that it should be open to the assessee contend that there is no "concession" in the matter of accommodation provided by the employer to the employees and the case is not covered by section 17(2) (ii) of the Act. Hence, having such a deeming provision in the Act by the amendment after this judgment is a sham to enable the Income Tax officials to collect taxes from the Public sector employees without giving them an opportunity to show that they are not enjoying any concession **which is against the principles of natural justice.**

Sir, in view of the facts enumerated above, we make an appeal to provide justice to more than 15 lakh employees of CPSEs and provide relief to them by withdrawing the discriminatory provision of perquisite tax immediately.

Thanking you,

Yours faithfully,


(K.P. Singh) 18/2/10
Secretary General

Encl.: As above

Copy to : 1.Hon'ble Prime Minister, } with a request to kindly
Govt. of India, } intervene in the matter.
New Delhi }