

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.2172/M/2016  
Assessment Year: 2011-12**

Ms. Neha Saraf, 51 Boarch Street, 1st Floor, Kapadia Chambers, Masjid Bunder, Mumbai - 09 PAN: BLBPS5959K	Vs.	ACIT-13(3), Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

Present for:  
Assessee by : None  
Revenue by : Shri N. Hemalatha, D.R.

Date of Hearing : 02.05.2018  
Date of Pronouncement : 16.05.2018

**ORDER**

**Per G. Manjunatha, Accountant Member:**

This appeal filed by the assessee is directed against order of the CIT (Appeals)-28, Mumbai dated 29.01.16 and it pertains to assessment year 2011-12. The assessee has raised the following grounds of appeal:

"01. That the learned CIT (A) erred in confirming the interest free loan Rs.2064938/- as perquisite u/s 17(2) (VIII) is quite illegal, arbitrary, unwarranted, unjustified and bad in law.

02. That the confirmation of notional interest as perquisite Rs2064938/- is quite illegal, in view of disallowance of interest u/s 36 have already been made in the hands of employer company.

03. That thus the order so passed is quite illegal, arbitrary, unwarranted, unjustified and bad in law.

04. That the appellant further craves leave, to add to alter and / or to amend any of the aforesaid grounds of appeal as and when necessary.”

2. The brief facts of the case are that the assessee has filed her return of income for assessment year 2011-12 on 26.09.11 declaring total income of Rs.34,90,510/- consisting of income from salary and income from other sources. During the course of assessment proceedings, the AO noted that the assessee was employed with M/s. Teej Impex Pvt. Ltd. and had drawn salary income of Rs.24 lakhs per annum. Further, it was noticed that the assessee had obtained interest free unsecured loan from the said employer. Since the assessee is drawing a salary of Rs.2 lakhs and more per month, in view of the provisions of section 17(iii)(c), the value of any benefit obtained by the employee by way of interest free unsecured loan is assessable as perquisite and chargeable to tax. Therefore, the AO called upon the assessee to explain as to why the benefit received by way of interest free unsecured loan shall not be treated as perquisite and taxed under the head income from salary. In response, the assessee vide her letter dated 08.03.14 submitted that she was not an employee of M/s. Teej Impex Pvt. Ltd. and the question of employer employee relationship is absent to tax value of the benefit obtained by way of unsecured loan as perquisite chargeable to tax under section 17(iii) of the Income Tax Act, 1961. The AO after considering the relevant submissions of the assessee observed that the assessee has derived income from salary from M/s. Teej Impex Pvt. Ltd. which is evident from the fact that the employer M/s. Teej Impex Pvt. Ltd. has deducted tax at source on salary paid to the assessee and issued form 16.

The AO further observed that it is also evident from the fact that the assessee has obtained benefit by way of interest free unsecured loan which is chargeable to tax as perquisite under section 17(iii)(c) of the Income Tax Act, 1961 and accordingly determined value of perquisite by invoking rule 3(7)(i) of the Income Tax Rules, 1962 and estimated 15% interest on such loan and made additions of Rs.43,80,165/-. Similarly, the AO also made additions towards value of perquisite in respect of motor car under section 17(2)(iii)(a) and made additions of Rs.9,64,800/-.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has filed elaborate written submission which has been reproduced by the Ld. CIT(A) at paragraph 4 of his order in pages 3 to 5. The sum and substance of the arguments of the assessee before the Ld. CIT(A) are that the AO was erred in making additions towards value of perquisite in respect of interest free unsecured loan and motor car without appreciating the fact that there is no employer and employee relationship between the assessee and the company and hence the requirement of determination of value of perquisite does not arise.

4. The Ld. CIT(A) after considering relevant submissions of the assessee partly allowed appeal filed by the assessee, wherein he has deleted additions made by the AO towards value of perquisites in respect of motor car by holding that there is no employee employer relationship between the

assessee and M/s. Near Ocean Securities Pvt. Ltd. Therefore, the question of determination of value of perquisites in respect of motor car does not arise. However, allowed partial relief in respect of value of perquisite determined by the AO towards interest free unsecured loan by holding that the facts indicate that the value of interest free unsecured loan has to be assessed as perquisite and the allowability or otherwise of the interest in the hands of the employer is not relevant to the nature of benefit enjoyed by the assessee. The Ld. CIT(A) further observed that although the AO was right in determining value of perquisite in respect of interest free unsecured loan, but failed to follow rule 3(7)(i) while determining the quantum of perquisite which is based on rate charged by SBI as on 1<sup>st</sup> day of the previous year in which year the assessee has received loan from the employer. Accordingly, determined value of perquisite as per rule 3(7)(i) at Rs.20,64,938/- as against the additions made by the AO for Rs.43,80,165/-. The relevant portion of the order of the Ld. CIT(A) is extracted below:

**“5. DECISION:** I have carefully considered the facts of the case, grounds of appeal and written submissions made before me. Grounds 1,6&7 are general in nature not requiring any specific adjudication. Ground 5 is a consequential ground wherein the grievance of the appellant is that the AO has not considered the carry forward loss while computing total income. The AO is directed to verify the facts on this issue and grant carry forward of loss if the appellant is so eligible.

**5.1 Grounds 2&3:** These grounds are against the action of the AO in adding of the interest free loan availed from her employer as a perquisite u/s 17(iii)(c). The facts are not in dispute here. The appellant is indeed an employee of Teej Impex Pvt Ltd and gets salary from the company. This is evidenced by Form 16 issued by the company. Therefore the employer - employee relation is established. It is also admitted that an interest free loan has been taken by her from her employer. In the circumstances, the value of the same has to be assessed as a perquisite in her hands by following Rule 3(7)(i). The appellant claims that as the interest on the loan given to her has already been disallowed in the hands of the company, the same

cannot now be assessed as a perquisite in her hands. I am afraid I cannot agree with the appellant here. Quite clearly, the facts indicate that the value of interest free loan has to be assessed as perquisite and the allowability or otherwise of the interest in the hands of the employer is not relevant to the nature of benefit enjoyed by the appellant. I therefore hold that the AO was right in assessing the value of interest free loan as a perquisite in the hands of the appellant. However, I find that the AO has not followed rule 3(7)(i) while determining the quantum of perquisites. Rule 3(7) states that the perquisite is to be valued by calculating the monthly interest computed at the rate charged by the SBI as on 1st day of the pervious year in respect of the same loans advanced by it. The appellant has filed a without prejudice computation of interest as per rule 3(7)(i) alongwith the supportings from the SBI regarding rate of interest etc. I find that the correct valuation of the perquisite as per rule 3(7)(i) is Rs 20,64,938. The addition made by the AO is therefore upheld to the extent of Rs20,64,938. The appellant gets a relief of Rs 23,15,227. Ground 2&3 are partly allowed.

5.2 **Ground 4:** This is against the action of the AO in assessing the value of the car as a perquisite. I find that this addition itself is misconceived. I find that there is no employee - employer relation between the appellant and Neer Ocean Securities Pvt Ltd. Moreover, the company has purchased the car on 31/03/2011 and the same has been registered with the RTO only on 25/06/2012. It is therefore clear that the car has not been put to use by the company. In any case, in the absence of an employer employee relation between Neer Ocean and the appellant nothing can be assessed as a perquisite in her hands. Accordingly, the addition of Rs 9,64,800 made by the AO is deleted. Ground 4 is allowed.”

5. None appeared for the assessee. We have heard the Ld. D.R. and perused the materials available on record. The fact with regard to employment with M/s. Teej Impex Pvt. Ltd. is although disputed by the assessee, the AO has brought out clear facts to establish that the assessee is employed with M/s. Teej Impex Pvt. Ltd. and drawn salary of Rs.24 lakhs per annum. It is also an admitted fact that the assessee has taken interest free unsecured loan from her employer. Therefore, the AO was right in determining the value of perquisite in respect of interest free unsecured loan. Although the AO has determined value of perquisite as per the provisions of section 17(iii)(c), while calculating the value of perquisite he has adopted adhoc 15% on outstanding loan

amount instead of determining the value as per the prescribed rule provided under rule 3(7)(i) of IT Rules, 1962. The Ld. CIT(A) has determined the value of perquisites as per rule 3(7)(i) for Rs.20,64,938/- and allowed partial relief to the assessee. Facts remain unchanged. The assessee did not appear before us to controvert the findings of facts recorded by the Ld. CIT(A). Therefore, we are of the considered view that the Ld. CIT(A) was right in determining the value of perquisite as per rule 3(7)(i) and hence we are inclined to uphold the findings of Ld. CIT(A) and dismiss the appeal filed by the assessee.

6. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 16.05.2018.

Sd/-  
**(Joginder Singh)**  
**JUDICIAL MEMBER**

Sd/-  
**(G. Manjunatha)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 16.05.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.