No perquisites if contribution to society for meeting education of employee's children never crossed Rs. 1,000 pm

Summary – The High Court of Gujarat in a recent case of Gujarat Co-operative Milk Marketing Federation Ltd., (the Assessee) held that where assessee made part payment of fees of childrens of its employees to one Educational Society to recoup deficiency suffered by said society and burden borne per child per month had never crossed Rs. 1000, no perquisite would arose in hands of employees of assessee

Facts

- The assessee co-operative milk marketing federation filed its return for the assessment years 2000-01 and 2001-02. The Assessing Officer upon verification of return of income was of the view that the assessee had not treated amount paid towards part payment of tuition fees of children of its employees made to one Education Society and therefore, it amounted to perquisite to that extent in the hands of the employees of the assessee, hence, assessee was liable to deduct TDS on same.
- The Assessing Officer issued a notice under section 201(1) and 201(1A) calling upon the assessee to explain why tax to the extent not deducted should not be recovered.
- The assessee in response contended that contribution to said Educational Society was a concessional education facility given to the employees to facilitate education of their children hence, no perquisite arose. The assessee further contended that by virtue of a new rule 3, exemption limit of Rs. 1000 was available for the assessment year 2002-03 onwards and therefore, contribution for assessment year 2002-03 would not given rise to perquisite in hands of the employees.
- The objection of the assessee was rejected by the Assessing Officer.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On second appeal, the Tribunal upheld the order of the Commissioner (Appeals), holding that the assessee had failed to deduct tax at source in terms of section 192.
- On appeal to the High Court:

Held

- It is not in dispute that the children of the employees of appellant-assessee are studying in Educational Society and are paying fees at a subsidized rate. It is equally true that the recurring deficit of the Society is being recouped by the contributions made by the assessee based on number of students representing the employees' wards, and it is under these circumstances that the assessee contributed Rs. 5,91,030 and Rs. 6,43,126 for the assessment years 2000-2001 and 2001-2002 respectively. Thus, the burden borne per child per month has never crossed Rs. 1,000 by the assessee, and therefore, there would be no question of any perquisite arising in the hands of the

employees of the assessee, and therefore, deduction of TDS would also be not permissible. The contribution cannot be said to be perquisite in the hands of the employees for any of the years.

- From the wordings of rule 3(e), it can be said that it would be applicable only for free educational facilities, as nothing is mentioned therein of concessional educational facilities. Contributions to the Educational Society is towards the deficit of the fees towards wards of the employees, and therefore, rule 3(e) would not apply to the facts of this case and hence, no perquisite would arise in the hands of the employees for the assessment years in question. The legislation amended the said rule only for subsequent period to include even concessional education facility. Therefore, rule 3(2) read with section 17 cannot be said to have been violated and the assessee cannot be held liable to recover tax under section 201(1) to the extent the tax is due from its employees. Hence, findings of the Tribunal that assessee has failed to deduct tax at source on such contributions in terms of provision of section 192 read with section 17 appears to be not correct or legal. The assessee cannot be said to be a defaulter of the amount and liable under section 201(1) or to make payment of interest leviable under section 201(1). The judgment relied upon by the revenue would not be applicable to the facts of the case on hands.
- In the result, Tax Appeal is allowed. The judgment of the Tribunal is hereby quashed and set aside.