

## Rent not to be held as benefit/perquisite just because spouse had substantial interest in lessee-Co.

**Summary –** The Pune ITAT in a recent case of Smt. Nisha Anil Jain, (the Assessee) held that when assessee had let out property to the company (JISL) in which her husband and their relatives were holding substantial interest, it means that rent has been derived as a *quid-proquo* for letting out the property, thus, such receipt of rent could not be characterized as benefit or perquisite under Section 2(24)(iv)

### Facts

- The assessee had let out property to the company (JISL) in which her husband and their relatives were holding substantial interest. During the relevant year, the assessee has received a rent which was adjusted against interest-free deposit received from JISL.
- The Assessing Officer taxed rental receipts under section 2(24)(iv) in preference to section 22. Thus, the assessee was denied standard deduction of 30% under Section 24. The CIT(A), however, cancelled the order of AO. The aggrieved revenue filed the instant appeal.

### Held

- For the sake of ready reference section 2(24)(iv) of the Act is reproduced as under :-

*"2. In this Act, unless the context otherwise requires,—*

*Xxxxxxxxxxx*

*(24) "income" includes —*

*the value of any benefit of perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid."*

- A bare reading of the provision would show that section 2(24)(iv) seeks to cover value of benefit/perquisite derived by assessee from a company which would have been payable the assessee or its relatives against the obligation. The provision is not intended to restrict the right of the Company to advance security deposits to its directors or relatives against the valuable consideration i.e. for obtaining house property on rent.
- Section 2(24)(iv) will normally come into play only when the company in which the directors or its relatives have taken advantage in respect of any obligation which the director and their relatives are expected to discharge. In the present facts, section 2(14)(iv) has no application. The agreement has

been entered into with the company for which rent has been paid and hence the rent has been derived as a *quid-proquo* for letting out the property. Such receipt of rent cannot be characterized as benefit or perquisite under S. 2(24)(iv). This is not some kind of benefit bestowed gratuitous and without consideration.