

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 1117/2007**

**COMMISSIONER OF INCOME TAX (TDS) ..... Appellant  
Through Mrs. P.L. Bansal, Adv.**

**versus**

**DELHI PUBLIC SCHOOL ..... Respondent  
Through Mr. Abhishek Maratha, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

**O R D E R**

**22.11.2007**

**1. The Revenue is aggrieved by an order dt. 23rd March, 2007 passed by the Income-tax Appellate Tribunal ('the Tribunal'), Delhi Bench 'H' in ITA No. 483/Del/2006 relevant for the asst. yr. 2003-04.**

**2. The only issue that arises for consideration is with regard to the interpretation of r. 3(5) of the IT Rules, 1962 ('Rules'). The assessee's school gives free education to the children of the staff. The question was whether this could be treated as a perquisite in their hands. Rule 3(5) of the Rules reads as follows :**

**"(5) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure**

incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality. Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered ;

Provided that where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, nothing contained in this sub-rule shall apply if the cost of such education or the value of such benefit per child does not exceed Rs.1,000 per month."

3. We find that the AO did not apply his mind to the later part of r. 3(5) where the determination of the value of the perquisite is with reference to the cost of such education in a similar institution in or near the locality. Instead he went by the cost of education for other students in the same

**school and took that as the perquisite value in the hands of the employee and levied tax on the assessee accordingly.**

**4. The Tribunal has pointed out, and in our opinion rightly, that the later part of r. 3(5) of the Rules, which requires the AO to determine the cost of education in a similar institution in or near the locality was completely overlooked by the AO and, therefore, he proceeded on an entirely incorrect proposition.**

**5. Factually, the CIT(A) held that on the basis of the accounts maintained by the assessee, the cost of education was Rs. 902.27 per month per child and, therefore, the assessee is also entitled to the benefit of the proviso. But as we mentioned above, we are not going into this aspect of the matter because we find that on the first issue itself the AO has erred in understanding the Rules.**

**6. No substantial question of law arises.**

**7. Dismissed.**

**MADAN B. LOKUR, J**

**NOVEMBER 22, 2007 S. MURALIDHAR, J**

**Kapil**