CALCUTTA HIGH COURT

Commissioner of Income-Tax

Vs.

Britannia Industries Co. Ltd.

(S Mukharji and S M Guha JJ.)

24.11.1980

JUDGMENT

SUDHINDRA MOHAN GUHA, J.

1. On the oral application of the learned advocate for the revenue, the name of the respondent in the cause title is changed to Britannia Industries Company Ltd.

2. In this reference, we are posed with a short point, viz.:

"Whether, on the facts and in the circumstances of the case, and on a correct interpretation of Section 40(c)(iii) of the Income-tax Act, 1961, and of Rule 3(c)(ii) of the Income-tax Rules, 1962, the Appellate Tribunal was justified in holding that the value of the perquisite of free car provided to the employees should be Rs. 150 per month in respect of each employee to whom the free use of the assessee's car was provided ?"

3. This reference, at the instance of the Commissioner of Income-tax, West Bengal-IV, Calcutta, under Section 256(1) of the I.T. Act, 1961, relates to the assessment year 1966-67. For this assessment year, the assessee, which is a limited company, claimed that the value of the perquisite of free car provided to the employees should be worked out under Rule 6D of the I.T. Rules, 1962. The ITO, however, did not agree with the assessee-company and, instead, held that the value of the perquisite of the free car provided to employees should be 50 per cent. of the expenditure on running and maintenance of the car and on this basis the ITO worked out the addition in excess of the ceiling laid down under Section 40(c)(iii).

4. The assessee-company came up in appeal before the AAC. It was argued that the value of the perquisite of the free car provided to the employee had been arbitrarily taken by the ITO at 50 per

cent. of the actual expenditure on running and maintenance of the car for which there was no basis. It was held by the AAC that the value of the perquisite should be taken , at Rs. 150 per month per employee and the disallowance under Section 40(c)(iii) should be worked out accordingly.

5. Being aggrieved and dissatisfied with the order passed by the AAC, the department came up in appeal before the Tribunal. It was the specific finding of the Tribunal that there was no material in support of the department's contention that the cars were allotted to the employees for their full-time use. On the contrary, it was found that the ITO himself had estimated only half of the expenses on maintenance and running of the car as perquisite of the employees which negatived the contention that the cars were used not for business proposes but solely by the assessee-company's employees. The Appellate Tribunal found that the ITO had not considered what was the total use of the cars and what was the use of the cars relating to the personal work of the employees and there was, therefore, no material in support of the ITO's estimate that 50 per cent. of the expenses relating to the maintenance and running of the car were for the personal use of the employees. In the above circumstances, the Appellate Tribunal held that since under Rule 3 of the I.T. Rules, 1962, the value of the perquisite of the free car provided to the employees for the purpose of assessment under the head "Salaries" would be Rs. 150 per month the value of the perquisite in the hands of the employer, that is, the assessee-company, for the purpose of the ceiling under Section 40(c)(iii) should also be taken at the same amount, that is, Rs. 150 per month per employee.

6. It is submitted on behalf of the revenue, in this case, that both the AAC and the Appellate Tribunal fell into an error in rejecting the findings of the ITO as to the working out of the actual amount deducted. In short, it is the contention of the revenue that there would be no application of Rule 3(c)(ii) framed under the I.T. Rules, 1962. Clauses (c)(i) and (c)(ii) of Section 40 of the I.T. Act, 1962, relate to disallowance of expenditure on depreciation or other allowance in the case of companies. But we are concerned here with Clause (c)(iii) which was first added by the Finance Act, 1963, with effect from 1st April, 1963, and which reads as follows;

"Any expenditure which results directly or indirectly in the provision of any remuneration or benefit or amenity to an employee, who is a citizen of India, to the extent such expenditure exceeds the amount calculated at the rate of five thousand rupees per month for any period of his employment after the 28th day of February, 1963 :

Provided that in computing the aforesaid expenditure any payments by way of gratuity or any sums comprised in the transferred balance of an employee participating in a recognised provident fund referred to in Clause (vii) of Sub-section (1) of Section 17, or the amount of any compensation referred to in Clause (i) or any payment referred to in Clause (ii) of Sub-section (3) of that Section shall not be taken into account."

7. This clause was, however, omitted by the Finance Act, 1968, with effect from 1st April, 1969. There was no dispute about the fact that there was no material in support of the contentions made by the department that the cars were allotted to the employees exclusively for their full-time use. It was also found by the ITO in a roundabout way that the car was used both for the business purpose and for the personal use of the employees because he himself had estimated half of the expenses on maintenance and running of the cars as perquisite of the employees. There would have been some merit in the contention of the department had there been material on record to show what was the total use of the cars and what was the use of the car relating to the personal work of the employees. Naturally, it was rightly found by the Tribunal that there was no material in support of the ITO's

estimate that 50 per cent. of the expenses relating to the maintenance and running of the cars were for the personal use of the employees. Rule 3(c)(ii) of the I.T. Rules, 1962, provides that where a motor car is owned or hired by the employer, the expenses on maintenance and running for the assessee's profit or personal purposes are met by the assessee and where the horse power rating of the car exceeds 16 and the cubic capacity of the engine exceeds 180 litres, the sum of Rs. 150 should be taken as the amount of perquisite per employee. At p. 28 of the paper book, it is rightly pointed out by the Tribunal that it would lead to a very anomalous situation if the value of the perquisite of the car provided by the assessee-company to the employees was taken at Rs. 150 per month for the purpose of assessment of the employees under the head "Salaries" and was taken at a different figure for the purpose of working out a ceiling under Section 40(c)(iii) in the hands of the assessee-company, which is the employer. We are fully in agreement with the view of the Tribunal that there cannot be any two different standards for assessment in respect of the employee and the employer. It is also equitable that what the payer gives is what the receiver receives. In this case, we do not find that the Appellate Tribunal was in any way unjustified in confirming the findings of the AAC. In the result, we hold that if the value of the perquisite of the car provided by the company to its employees is to be taken in the hands of the employees for the purpose of assessment of the employees under the head "Income from salaries V at Rs. 150 per month, the same value should be taken in the hands of the assessee-company which is the employer for the purpose of working out the ceiling under Section 40(c)(iii). Mr. Murarka, learned advocate for the assessee, refers our attention to a decision of the Mysore High Court in the case of CED v. J. Krishna Murthy [1974] 96 ITR 87 and specially at p. 96 of the report. We do not think that the principle enunciated therein is of any assistance for the purpose of our present enquiry. However, as we are not in a position to uphold the argument of the learned advocate for the revenue, we answer the question in the affirmative and in favour of the assessee.

8. The parties will pay and bear their respective costs.

9. In view of our findings, as aforesaid, the application filed by the revenue on 14th August, 1974, under Section 256(1) of the I.T. Act, 1961, is rejected.

Sabyasachi Mukharji, J.

10. I agree.