(1990) 08 BOM CK 0122

In the Bombay High Court

Case No : Income-tax Reference No. 619 of 1976

Commissioner of Income Tax — APPELLANT

Vs

Alembic Distributors Ltd. — RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:
Income Tax Act, 1961 — Section 17, 40(C)

Citation : (1991) 191 ITR 58

Hon'ble Judges : T.D. Sugla, J;Sujata V. Manohar, J

Bench : Division Bench

Advocate : G.S. Jetley, for the Appellant; S.J. Mehta, for the Respondent

Judgement

T.D. Sugla, J.—The Income Tax Appellate Tribunal has referred to this court for opinion the following two questions as questions of law u/s 256(1) of the Income Tax Act, 1961 :

"1. On the facts and in the circumstances of the case, whether, for working out the disallowance required to be made under the provisions of section 40(c)(iii) of the Income Tax Act, 1961, the cash allowances like fixed monthly allowance, bonus and incentives, car allowance and house rent allowance should be regarded as a benefit, amenity or perquisite to the employees ?

2. Whether, for purposes of section 40(c)(iii) of the Income Tax Act, 1961, the value of a perquisite to an employee provided in the form of rent-free quarters should be taken at the actual rent paid for the quarters by the employer, irrespective of the value of the said perquisite, computable under the Income Tax Act of 1961 read with rule 3 for purposes of section 17 of the Act ?"

2. In so far as question No. 1 is concerned, counsel are agreed that the question requires to be answered in the negative and in favour of the assessee in view of our court''s decision in CIT v. Indokem Private Ltd. [1982] 132 ITR 125. The question is so answered.

3. Question No. 2, it may be stated, has been referred by the Tribunal at the instance of the assessee in the reference application filed by the Department. The assessee had lost before the Tribunal and the question raised herein is not dependent upon the Department''s question. In that view of the matter, it has to be held, in view of the Supreme Court decision in the case of Commissioner of Income Tax, Kerala Vs. V. Damodaran, , that reference of his question was not warranted. Accordingly, this question is not answered.

4. No order as to costs.

