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**(1989) 06 KL CK 0023**

**In the High Court Of Kerala**

**Case No : Income-tax Reference No. 147 of 1984**

Commissioner of Income Tax

APPELLANT

Vs

C. Narayanan Nair

RESPONDENT

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**Date of Decision : 12-06-1989**

**Acts Referred:**

Income Tax Act, 1961 — Section 15, 16, 16(1), 17, 2(24)  
Income Tax Rules, 1962 — Rule 3

**Citation : (1989) 180 ITR 303**

**Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J**

**Bench : Division Bench**

**Advocate : P.K. Ravindranatha Menon, for the Appellant; P. Radhakrishnan, for the Respondent**

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## **Judgement**

K.A. Nayar, J.—The main question in this Income Tax referred case is whether the unauthorised advantage taken by the employee without the authority of the employer in the form of using the motor car given exclusively for the business of the employer for his private purposes also could be considered as a perquisite in the hands of the employee. The case relates to the assessment year 1978-79. The assessee was the manager of S. Koder and was drawing a salary exceeding Rs. 18,000. During the relevant accounting period, the employer had provided a motor car for use by the assessee in connection with the business of the employer. The assessee produced a certificate from the employer to the effect that the cars and vans belonging to the employer firm were used during the accounting period only for the purpose of the business of the firm and that the manager and other employees of the firm were not permitted to use the same for their personal purposes. The Income Tax Officer found that the assessee had been using the car for participating in public, functions, marriage parties and for visiting clubs. Since he found that the assessee was Using the car for personal purposes also, he restricted the standard deduction u/s 16(1) of the Income Tax Act, 1961, to Rs. 1,000. Under Rule 3(c)(ii) of the Income Tax Rules, 1962, the Income Tax Officer worked out the perquisite value of the use of the car at Rs.

3,600 and made an addition of the same to the income of the assessee. The Appellate Assistant Commissioner confirmed the assessment. On second appeal before the Tribunal, the Tribunal deleted the addition holding that the said addition as perquisite value of the conveyance is not sustainable. The Tribunal also held that the standard deduction admissible u/s 16(1) cannot be restricted. Thereafter, at the instance of the Revenue, the following questions of law have been referred to this court u/s 256(1) :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the addition of Rs. 3,600 as perquisite value of the conveyance is not sustainable and the standard deduction admissible u/s 16(1) cannot be restricted ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal had any material before it for coming to the conclusion that the use of the motor car by the employee was clandestine, especially in view of the statement of the assessee wherein he has stated that he was using the car for personal purposes also ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that "the assessee even though he had used the conveyance for personal purposes also is not in receipt of a perquisite falling under Rule 3(c) (ii)" and that no addition valuing the perquisite under the clause is, therefore, warranted ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the addition of Rs. 3,600 and directing the Income Tax Officer to allow full deduction u/s 16(1) ?"

2. We heard counsel for the Revenue and also counsel for the respondent.

3. The Tribunal found that the certificate issued by the employer is to the effect that the conveyance had been provided for the use of the employee for business purposes only and that the manager had not been permitted to use the car for his personal purposes. The private use of the car was not authorised or allowed by the employer. Only the value of a motor car provided by the employer for use by the assessee partly in the performance of his duties and partly for his private and personal purposes is to be determined in accordance with Rule 3(c)(ii). But when the motor car is provided by the employer for use by the assessee wholly and exclusively in the performance of his duties, this rule is not attracted. Perquisite, according to Section 17 of the Income Tax Act, includes the value of any benefit or amenity granted or provided free of cost or at any concessional rate. Conveyance, in order to be a perquisite falling under Rule 3(c)(ii), must be one provided by the employer for use partly for personal purposes. If such use is not permitted by the employer in providing the conveyance, the case cannot be brought under this rule. Any clandestine use of the motor car by the employee who has been provided with the conveyance for being used wholly and exclusively for the purpose of the business, would not amount to a benefit or

amenity granted or provided free of cost by the employer.

4. Admittedly, the assessee is a salaried employee drawing a salary of over Rs. 18,000 and, therefore, his income under the head "Salaries" will have to be computed in the manner provided in Sections 15 16 and 17. In computing the salary chargeable to Income Tax, deduction will have to be made as mentioned in Section 16, the relevant portion of which is extracted hereunder :

"16. The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely : --

(i) in respect of expenditure incidental to the employment of the assessee, a sum calculated on the basis provided hereunder, namely : --

(a) where the salary derived from such employment does not exceed Rs. 10,000. 20 per cent, of such salary ;

(b) where the salary derived from such employment exceeds Rs. 10,000. Rs. 2,000 plus 10 per cent, of the amount by which such salary exceeds Rs. 10,000. or Rs. 3,500 whichever is less :

Provided that-

(i) where the assessee is in receipt of a conveyance allowance from his employer ; or

(ii) where any motor car, motor cycle, scooter or other moped is provided to the assessee by his employer for use by the assessee, otherwise than wholly and exclusively in the performance of his duties ; or

(iii) where one or more motor cars are owned or hired by the employer of the assessee and the assessee is allowed the use of such motor car or all or any of such motor cars, otherwise than wholly and exclusively in the performance of his duties,

the deduction under this clause shall not exceed one thousand rupees."

5. The above section says that the standard deduction will have to be allowed but if the assessee's case is covered under the proviso, the standard deduction shall not exceed one thousand rupees. Under the proviso, either the assessee must be in receipt of a conveyance allowance or the assessee must have been provided by his employer with a motor car for use by the assessee, otherwise than wholly and exclusively in the performance of his duties or a motor car should have been hired or owned by the employer of the assessee and the assessee allowed the use of such motor car, otherwise than wholly and exclusively in the performance of his duties. In the case in question, the assessee has not been given a motor car otherwise than wholly and exclusively in the performance of his duties. The certificate clearly says that the motor car is used wholly and exclusively for the purpose of the business of the firm. No collusion between the assessee and the employer is also found. Therefore, there is no justification for limiting the

standard deduction to rupees one thousand. The next section is Section 17 which is relied upon by the Revenue.

6. For the purpose of charging "salary" u/s 17(2), "perquisite" also will have to be included and it is the contention of the Revenue that the provision of a motor-car will be a perquisite chargeable u/s 17(2)(iii)(c). For the purposes of Sections 15 16 and 17, the term "perquisite" will include the value of any benefit or amenity granted or provided free of cost or at a concessional rate by an employer to an employee whose income under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds eighteen thousand rupees. How the quantum of this perquisite has to be worked out is mentioned in Rule 3(c)(ii) of the Income Tax Rules, 1962. The value of the benefit of perquisite will be assessable as "income" within the meaning of Section 2(24)(iv). But, in order to be taxable as income, the benefit should have been authorised by the employer. The value of any unauthorised benefit in respect of which the employee would be liable to make restitution to the employer cannot be a perquisite within the meaning of Section 17(2)(iii)(c). In short, in order to bring a benefit or advantage within the provisions of Section 17(2)(iii), it must have a legal origin. Any unauthorised advantage taken by the employee without the authority of the employer would only create a legal obligation to restore such advantage, and, therefore, such an unauthorised advantage will not amount to a benefit or advantage within the meaning of Section 17(2)(iii). In the decision reported as Commissioner of Income Tax Vs. C. Kulandaivelu Konar (Decd.) by L. Rs., the law is stated as follows :

"But there could be no doubt that in order to bring a benefit or advantage within the provision of Section 17(2)(iii), it must have a legal origin and since any unauthorised advantage taken by an employee without the authority of the employer would create a legal obligation to restore such advantage, it would not amount to a benefit or advantage within the meaning of Section 17(2)(iii)."

7. To the same effect are the decisions in Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another, in M.M. Mehta Vs. Commissioner of Income Tax (Central), .

8. The question whether unauthorised use of the car of the company by the assessee would not constitute a perquisite came up for consideration in COMMISSIONER OF Income Tax Vs. LATE JAWAHARLAL NAGPAL (THROUGH LEGAL REPRESENTATIVES SMT. KANTA NAGPAL AND OTHERS), , their Lordships of the Madhya Pradesh High Court answered the question as under :

"As regards question No. (2), the Tribunal, in our opinion, was right in holding that the unauthorised use of the car of the company by the assessee would not constitute a perquisite. The view of the Tribunal is supported by a decision of the Madras High Court in Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another, We see no cogent reason to take a view different from that taken in

Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another, . Our answer to question No. (2) referred to this court is, therefore, in the affirmative and against the Revenue."

9. Applying these principles, we hold that the Tribunal is justified in holding that the addition of Rs. 3,600 as perquisite value of the conveyance is not sustainable and further that the standard deduction admissible u/s 16(1) cannot be restricted to Rs. 1,000 and further directing the Income Tax Officer to allow full deduction u/s 16(1). In the circumstances, we answer all the questions, i.e., questions Nos. 1, 2, 3 and 4, in the affirmative, in favour of the assessee and against the Department.

10. A copy of this judgment under the seal of the High Court and the signature of the Registrar shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.