(1989) 02 P&H CK 0046

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 5 of 1983

Commissioner of Income Tax APPELLANT

Vs

Nuchem Plastics Ltd. RESPONDENT

Date of Decision : 02-02-1989

Acts Referred:

Income Tax Act, 1961 — Section 40
Income Tax Rules, 1962 — Rule 3, 6D

Citation : (1990) 82 CTR 357 : (1989) 96 PLR 132

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; Praveen Goel, for the Respondent

Judgement

S.S. Sodhi, J.—The question of law referred for the opinion of this court reads as under :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has been right in law in directing the Income Tax Officer to calculate the value of the perquisite with reference to Rule 3 of the Income Tax Rules, 1962 ?"

2. The question referred has clearly to be answered in the affirmative, in favour of the assessee and against the Revenue, keeping in view the judgment of the High Court of Calcutta in Commissioner of Income Tax Vs. Britannia Industries Co. Ltd., , with which we respectfully concur. The Appellate Assistant Commissioner in that case held that the value of the perquisite of free car provided to an employee should be taken at Rs. 150 per month per employee as per Rule 3(c)(ii) of the Income Tax Rules, 1962 (hereinafter referred to as the "Rules"), in the assessment of the assessee-company for the purpose of the ceiling u/s 40(c)(iii) of the Income Tax Act, 1961. This order was upheld by the Tribunal in appeal When the matter came up in reference before the High Court, it was held 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, in

view of Rule 3(c)(ii), 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 the ceiling u/s 40(c)(iii) in the hands of the assessee-company, i.e., the employer. There could not be two different standards for assessment in respect of the employee and employer. It was further observed that it was equitable too that what the payer gives is what the receiver receives. The value of the perquisite of free car, therefore, provided to the employees in the instant case would be Rs. 150 per month per employee in accordance with Rule 3(c)(ii) and the disallowance u/s 40(c)(iii) would be worked out accordingly.

3. This reference is answered accordingly. There will, however, be no order as to costs.