
(1998) 02 MAD CK 0132

In the Madras High Court

Case No : Tax Case No. 1659 of 1984 (Reference No. 1184 of 1984)

Commissioner of Income Tax

APPELLANT

Vs

S. Viji

RESPONDENT

Date of Decision : 12-02-1998

Acts Referred:

Income Tax Act, 1961 — Section 16

Citation : (1999) 238 ITR 483

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; S.A. Balasubramaniam, for the Respondent

Judgement

R. Jayasimha Babu, J.—As to whether an employee to whom a car is provided and the use of the same by such employee for personal use is also permitted, such an employee can claim the benefit of the standard deduction in respect of the assessment for the assessment year 1977-78, is the question that arises for consideration in this reference made by the Tribunal at the instance of the Revenue.

2. The assessee was a whole time executive director of Brakes India Limited. He was allowed the use of the car belonging to the company on condition that he paid a sum of Rs. 100 for any use of the car for private purposes. The Income Tax Officer, on this admitted position, reduced the standard deduction u/s 16(i), proviso clause (ii), on the ground that the assessee had not been provided with a vehicle wholly and exclusively for official purposes and the deduction was allowed only in a sum of Rs. 1,000. The Appellate Assistant Commissioner agreed with the Income Tax Officer. The Tribunal, however, has allowed the claim of the assessee in full. Its reasoning was that the employer had been reimbursed by the employee to the extent he incurred the expenditure on the personal and private use of the vehicle by the employee, and, therefore, the vehicle must be regarded as having been made available to the employee wholly and exclusively for the

purpose of his duties.

3. Section 16 of the Act deals with the deductions from salaries. u/s 16(i)(b), the maximum deduction allowable is Rs. 3,500. That amount is liable to be reduced to Rs. 1,000, if any one or more of the contingencies contemplated in clauses (i) to (iii) of the proviso to Section 16(i) is attracted. Clause (ii) of the proviso deals with a case 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". What is therefore required to be demonstrated by the assessee who has been provided with a vehicle by his employer is, that the vehicle has been provided wholly and exclusively for official purpose, if he wants to claim the maximum amount of deduction permissible having regard to his income. If the vehicle provided by the employer is used partly for official purpose and partly for personal purpose, the assessee will not be entitled to claim the full deduction as such user cannot be regarded as use wholly and exclusively in the performance of his duties.

4. Rule 3 of the Income Tax Rules and clause (C)(ii) deals with a situation like the one arising in this case namely the use of a motor car by an assessee, such car having been provided by his employer, partly for the performance of his duties and partly for his private or personal purpose. The table under rule 3(C) (ii) statutorily provides that the value of perquisite by the employer is to be taken as Rs. 100. Admittedly, in this case the assessee had been permitted to use the vehicle for personal purposes and he was paying to his employer a sum of Rs. 100 for such use and that sum had been fixed having regard to what is provided in rule 3(C)(ii) of the Income Tax Rules.

5. Learned counsel for the assessee invited our attention to the case of Commissioner of Income Tax Vs. P. Gency, . It was held by the court on the facts arising in the case before it that a sum of Rs. 200 paid by the employer to the employee to meet his outdoor travelling expenses did not fully cover his expenses for travelling and, therefore, would not be regarded as conveyance allowance and the benefit of a deduction of Rs. 2,400 u/s 16(iv) of the Act could not be denied. That decision is not of any help to the assessee, as here admittedly the employer had provided the vehicle, permitted personal use and had collected a sum of Rs. 100 for such personal user. The vehicle had clearly been provided for personal use as also for official purpose.

6. Learned counsel also referred to the decision of this court in the case of Commissioner of Income Tax Vs. A.R. Adaikappa Chettiar and Another, . The court held that the unauthorised user of the company's cars by the managing agents could not be regarded as a benefit or perquisite obtained by the partners of the managing agency. The court made a distinction between the benefits provided by the employer and unauthorised benefits. In this case, as pointed out earlier, no such unauthorised user by the employee has occurred. It was by agreement between the parties that personal use was permitted and a sum of Rs. 100 was collected for such personal use. The reasoning of the Tribunal is

wholly unsustainable. When once the vehicle is provided by the employer and that very vehicle is used for personal use by the employee on payment, such user by the employee and the payment therefor, cannot be artificially bifurcated and ignored for the purpose of deciding the nature and extent of the user of the vehicle by the employee. This is clearly a case where the vehicle was provided for personal as also official use, and the vehicle had not been provided wholly and exclusively for official purpose. In the statement of the case, the Tribunal has tried to justify its order even after setting out the question referred. This is wholly improper.

7. Our answer to the question that has been referred to us is, therefore, in the negative, in favour of the Revenue and against the assessee.

8. The circumstances of the case will not make any order as to costs.