(1995) 02 MAD CK 0073

In the Madras High Court

Case No : Tax Case No. 37 of 1983

Wheels India Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:
Income Tax Act, 1961 — Section 2(24), 40, 40A(5), 80VV

Citation : (1996) 134 CTR 350 : (1996) 218 ITR 293

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja for Subbaraya Aiyar, Padmanabhan and Ramamani, C.V. Rajan, for the Appellant;

Judgement

Thanikkachalam, J.—At the instance of the assessee, the Tribunal referred the following questions of law said to arise out of the order of the

Tribunal for our opinion under s. 256(1) of the IT Act, 1961 :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenses incurred by the applicant

amounting to Rs. 9,000 fall within the provisions of s. 80VV ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the actual expenditure on house rent of

employees should be taken into consideration for the purpose of disallowance under s. 40(c)/40A(5) ?

2. In computing the disallowance under s. 40(c) of the Act relating to the managing director, S. Ram, and the director, V. R. Srinivasan, the ITO,

inter alia, included the actual rent paid by the assessee in respect of the rent-free accommodation provided to these persons in the sums of Rs.

13,400 and Rs. 9,000, respectively. Before the CIT(A), the assessee contended that in respect of the rent-free accommodation, only the Income

Tax valuation should have been considered and not the actual rent paid by the assessee. The CIT refused to accept this view. Aggrieved, the

assessee filed an appeal before the Tribunal, wherein it is contended that as far as the house rent paid to the employee is concerned, it should be

considered as a perquisite and that the Income Tax valuation alone should be considered. The Tribunal pointed out that there was nothing in ss.

40(c) and 40A(5) of the Act to suggest that while applying the sections, it is not the actual expenditure on house rent that should be taken into

account in the hands of the employer, but the perquisite value in the hands of the employee. Thus, the Tribunal rejected the assessee''s claim in

respect of the house rent.

3. Before this Court, learned counsel appearing for the assessee submitted that in the matter of assessment, the Tribunal was not correct in taking

into consideration the entire amount paid by way of house rent to its employees. According to learned counsel, only ten per cent of the salary

payable to the employee alone can be taken into consideration in the matter of computing the house rent allowance. Learned counsel supported his

contention by referring to the provision contained in r. 3 of the IT Rules. Learned counsel further submitted that wherever there is a rule, it is

mandatory on the part of the Department to follow the said rule and not to deviate from it. In order to support his contention learned counsel relied

on the decision of the Supreme Court in Bharat Hari Singhania and others Vs. Commissioner of Wealth Tax (Central) and others, and

Commissioner of Income Tax Vs. Britannia Industries Co. Ltd., .

On the other hand, learned junior standing counsel appearing for the Department, submitted that in the present case, we are concerned with the

assessment to be made in the hands of the employer under ss. 40(c) and 40A(5) of the Act. All that we are concerned with is only the expenditure

incurred by the assessee in respect of which payment has been made or is to be made to any person who is an employee of the employer.

Therefore, the application of the provisions of r. 3 of the Rules has no relevance in the present case. Learned standing counsel further submitted

that when r. 3 of the Rules has no application, the decision of the Supreme Court in Bharat Hari Singhania vs. CWT (supra) also has no relevance to the issue arising in this case. In order to support his contention, learned standing counsel relied on various decisions.

4. The fact remains that the assessee, who is an employer, paid house rent allowance to its employees. While assessing the tax, the assessee

contended that only ten per cent of the house rent allowance should be taken into consideration for the purpose of levying tax and the actual

payment made by the assessee to its employees by way of house rent allowance should not be taken into consideration. Since under r. 3 of the IT

Rules, 1962, the value of the perquisite of free accommodation provided to the employees for the purpose of assessment under the head ""Salaries

would be Rs. 150 per mensem, the value of the perquisite in the hands of the employer, i.e., the assessee-company, for the purpose of ceiling

under s. 40(c)(iii) of the Act should also be taken at the same amount of Rs. 150 per mensem per employee.

5. In the decision in Commissioner of Income Tax Vs. Shriram Refrigeration Industries Ltd., Delhi High Court, after taking into consideration the

decisions in Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, , Commissioner of Income Tax Vs.

Rajesh Textile Mills Ltd., , Commissioner of Income Tax Vs. Ashoka Marketing Ltd., , COMMISSIONER OF INCOME TAX Vs. ELECTRO

STEEL CASTINGS LTD., and Commissioner of Income Tax Vs. Malayalam Plantations (India) Ltd., , held that in the matter of assessing the

cash payment made by the assessee-company to its employees by way of house rent allowance it should be assessed not at ten per cent of the

actual rent paid by the employer, but the actual amount paid by the employer by way of allowance of house rent. In the matter of assessing the

allowance of rent by the employer to the employee, r. 3 of the Rules has no application.

In the case of Bombay Burmah Trading Corporation Ltd. vs. CIT (supra), the Bombay High Court, while considering the provisions of s. 40(c)(iii)

of the Act, explained the decision of the Calcutta High Court in CIT vs. Britannia Industries Co. Ltd. (supra) in the following manner :

It was in view of these facts that the Calcutta High Court came to the conclusion 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"" 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 s. 40(c)(iii)''. The decision of the Calcutta High Court cannot be read as an authority that in all cases, for the

purpose of s. 40(c)(iii), the value of the perquisite in the hands of the employees computed, in accordance with relevant rules, must be ascertained.

It is not possible, therefore, to accept the argument of the learned counsel for the assessee that the value of the benefit or amenity or perquisite in

the hands of the employees had to be taken into account for the purposes of s. 40(c)(iii). Accordingly, question No. 1 has to be answered in the

affirmative and against the assessee.

Similarly, the same Calcutta High Court in CIT vs. Ashoka Marketing Ltd. (supra) while considering the provisions of s. 40A(5) of the Act and r.

3(a) of the Rules observed that r. 3 of the IT Rules, 1962, applies only to the computation of the value of the perquisite provided to an employee

for the purpose of assessing the same in his hands. This rule does not apply to the computation of the value of the perquisite for making the

disallowance under s. 40A(5) of the Act in the assessment of the employer company. In the abovesaid decision, the Calcutta High Court, following

the view expressed by the Bombay High Court in Bombay Burmah Trading Corporation Ltd. vs. CIT (supra) held that it will have no application in

the matter of assessment to be made in the hands of the employer with regard to house rent allowance given to its employees.

Similarly, in Commissioner of Income Tax Vs. P.R. Ramakrishnan, , this Court, while considering the provisions of ss. 2(24)(iv) and 40(c) of the

Act, held that s. 40(c) of the Act can be applied to the case of a company where excessive expenditure has been incurred by it with reference to

its assets which are used by the director or a person who has a substantial interest in the company or his relative and the disallowance is limited

only to such excess. It is further held that the purposes behind the two provisions are wholly different and it is not possible to dovetail s. 40(c) of

the Act into consideration of the assessment of the director or the person having a substantial interest in the company. Though the assessment on

the company applying s. 40(c) of the Act may not be wholly irrelevant, the stand that the director''s assessment must be based on such disallowance in the hands of the company is not correct. The value of the perquisite to be assessed in the hands of the director under s. 2(24)(iv)

need not be the amount disallowed in the assessment of the company under s. 40(c) of the Act.

However, learned counsel for the assessee relied on the decision in Prem Nath Gangneja Vs. Edwardganj Public Welfare Association and

Another, wherein the Punjab & Haryana High Court held that the value of the perquisite of free car provided to an employee should be taken at

Rs. 150 per mensem as per r. 3(c)(ii) of the Rules for the assessment of the employer company. The ceiling for disallowance under s. 40(c) of the

Act should be worked out accordingly. This decision was rendered following the decision of the Calcutta High Court in CIT vs. Britannia

Industries Co. Ltd. (supra). We have already pointed out that the decision of the Calcutta High Courts in CIT vs. Britannia Industries Co. Ltd.

(supra) has been explained by various High Courts with regard to the facts on each case.

In view of the majority judgment, rendered on this aspect by various High Courts, we consider that the order passed by the Tribunal in holding that

actual amount paid by way of house rent allowance is assessable in the hands of the employer under ss. 40(c) and 40A(5) of the Act is in order.

Accordingly, we answer the question referred to us in the affirmative and against the assessee. No costs.

