IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 193 OF 1999

Bajaj Auto Ltd. .. Applicant

v/s.

The Commissioner of Income Tax,
Central-II, Bombay .. Respondent

Ms. Vasanti Patel for the applicant
None for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 22nd JULY, 2016.

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal for Assessment Year 1982-83 seeks our opinion on the following questions of law :-

(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 40A(5) are applicable to the salary of the employee / employee directors for the period during which they were outside India?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that while computing the disallowance under Section 40A(5), the

perequisite value in respect of motor cars provided to the employees / employee-directors should be worked out on the basis of the actual expenditure instead of the perequisite value computed as per Rule 3 of the Income Tax Rules, 1962 ?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the sur-tax liability was not admissible as a deduction while computing the total income ?

2. Regarding Question (i) :-

(a) Ms. Patel, learned Counsel for the petitioner invites our attention to the decision of this Court in the applicant assessee's own case being Income Tax Reference No. 283 of 1999 (*Bajaj Auto Ltd. Vs. Commissioner of Income-Tax*) rendered on 25th July, 2015 wherein an identical question has been answered in favour of the applicant assessee. This by following earlier decision of this Court in ***Colour Chem Ltd. Vs. Commissioner of Income Tax, 238 ITR 171***.

(b) In the above view, the above question is answered in the affirmative i.e. in favour of the applicant assessee and against the Revenue.

3. Regarding question (ii) :-

(a) Ms. Patel, learned Counsel appearing for the applicant assessee very fairly states that this issue stands concluded against the applicant assessee and in favour of the Revenue by the decision of the Apex Court in ***Commissioner of Income Tax Vs. British Bank of Middle East 256 ITR 217***.

(b) In the above view, question (ii) is answered in the affirmative i.e. in favour of the Revenue and against the applicant assessee.

4. Regarding question (iii) :-

(a) Mrs. Patel, learned Counsel for the applicant assessee very fairly states that this issue stands concluded in favour of the Revenue by the decision of the Supreme Court in ***Smith Kline & French (India) Ltd. Vs. Commissioner of Income Tax, 219 ITR 581***.

(b) In the above view, question no.(iii) is answered in the affirmative i.e. in favour of the Revenue and against the applicant assessee.

5. Question (i) is answered in the negative i.e. in favour of the applicant assessee and against the Revenue.

Question nos. (ii) and (iii) are answered in the affirmative i.e. in favour of the Revenue and against the applicant assessee.

6. The Reference is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**