

## Commissioner of Income Tax, Bombay City-III, Bombay v. British Bank of Middle East

Civil Appeal No. 95 of 1998

[2001] Supp. 2 SCR 323 | 2001-08-30

**Whether the employer's disallowance under historical section 40A(5) for employee car benefits, where actual expenditure is not ascertainable, should use a realistic expenditure estimate or the employee-perquisite valuation under rule 3(c).**

40A(5)

Three-judge bench | S.P. Bharucha, J. | Y.K. Sabharwal, J. | Ashok Bhan, J.

Assessment years: 1975-76, 1976-77

### Historical employer-deduction rule; headnote winner conflict

This concerns section 40A(5) and rule 3(c) for AYs 1975-76 and 1976-77. It requires employer-side actual expenditure or realistic estimation, subject to the historical ceiling, and does not prescribe a universal 50% disallowance. The headnote incorrectly describes the High Court winner; the judicial text shows the assessee won there and Revenue won in the Supreme Court. Current law and comprehensive later treatment are unverified.

### 01 FACTS OF THE CASE

The assessee was a non-resident banking company. For AYs 1975-76 and 1976-77, the Assessing Officer estimated the value of free-car benefits to employees at 50% of running and maintenance expenses for the section 40A(5) disallowance. CIT(A) instead applied the employee valuation under rule 3(c). The Tribunal affirmed that approach, relying on the Calcutta High Court's Britannia Industries decision (SCR 325).

On Revenue's reference, the Bombay High Court answered for the assessee by following Geoffrey Manners. Revenue appealed from its judgment dated 21 March 1997 in ITR No. 305/1988. The question concerned the use of rule 3(c) in the employer's computation when actual expenditure for private car use was not ascertainable. The assessee did not appear despite service; B. Sen assisted as amicus curiae (SCR 325-326, 332).

Source: See the proposition-specific paragraph and PDF-page references below.

## 02 DISCUSSION BY THE HON'BLE COURT

The Court read the provisions in their distinct statutory settings. Rule 3 valued employees' non-monetary perquisites for the head Salaries. Section 40A(5) controlled the employer's deductions under Profits and gains of business or profession, disallowing expenditure/allowance beyond the applicable ceiling. Equal values in the two taxpayers' assessments were not required by the statute; importing the employee valuation would defeat the employer-side limitation (SCR 326–332).

The employer incurred the car expenditure and should supply the figures. If the figures were unavailable, expenditure had to be estimated realistically; the notional value used to tax the employee was not a substitute. The Court approved the Gujarat High Court's approach in *Rajesh Textiles Mills* and rejected the contrary rule-3 approach in *Britannia Industries* and *Geoffrey Manners*. The discussion and references to those decisions are those of this judgment; their separate originals were not independently reviewed for this note (SCR 330–332).

The Court did not prescribe 50% as a universally correct private-use percentage. That was the Assessing Officer's recorded estimate. The ratio determines the correct expenditure-based approach under the historical provision, subject to its statutory ceiling, rather than fixing an evidentiary estimate for every employer (SCR 325–326, 331–332).

Source: See the proposition-specific paragraph and PDF-page references below.

## 03 JUDICIAL DECISION

Revenue's appeal was allowed. The Bombay High Court judgment was set aside, and the referred question was answered in the negative in Revenue's favour. The Court ordered no costs; it did not state a new quantified disallowance or order a remand (SCR 332).

Source: See the proposition-specific paragraph and PDF-page references below.

## 04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Revenue

Appeal allowed; High Court judgment set aside; referred question answered in the negative; no costs

Final determination of the employer-versus-employee valuation question under the historical scheme

Rule 3(c) does not fix the employer's historical section 40A(5) expenditure disallowance. Realistic estimation remains fact-dependent; the judgment does not enact a universal 50% disallowance, deny all car expenditure, or determine present employee-perquisite taxation.

Source: See the proposition-specific paragraph and PDF-page references below.

### 05 AKHB REVIEW POINT

Keep three distinct inquiries visible: the expenditure actually incurred by the employer, the part attributable to the relevant benefit/private use, and the statutory ceiling applicable in the historical year. Records or a defensible realistic estimate are necessary where actual figures are not furnished; an employee's tax valuation cannot automatically answer the employer's deduction question. The Assessing Officer's 50% figure is procedural history, not a standard mandated by the Supreme Court.

For publication, use the judicial narrative rather than the headnote to identify the High Court winner. Preserve the historical statutory setting and check the applicable deduction provision and rule before using this reasoning for a later period.

Source: See the proposition-specific paragraph and PDF-page references below.

### PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

**Topic:** Identity and appeal

**Source url:** [Open cited source](#)

**Pdf pages:** 1; 3

**Paragraphs:** Cover and jurisdiction; author line

**Source role:** reported metadata and judicial text

2.

**Topic:** Facts and precise referred question

**Source url:** [Open cited source](#)

**Pdf pages:** 3; 4

**Paragraphs:** Unnumbered opening paragraphs; SCR 325–326

**Source role:** judicial text

3.

**Topic:** Historical section and rule

**Source url:** [Open cited source](#)

**Pdf pages:** 4; 5; 6; 7; 8

**Paragraphs:** Statutory extracts; SCR 326–330

**Source role:** judicial text

4.

**Topic:** Competing views, reasoning and final order

**Source url:** [Open cited source](#)

**Pdf pages:** 8; 9; 10

**Paragraphs:** Unnumbered discussion and conclusion; SCR 330–332

**Source role:** judicial text

5.

**Topic:** Headnote/judicial winner conflict

**Source url:** [Open cited source](#)

**Pdf pages:** 1; 4; 8; 10

**Paragraphs:** Headnote versus judicial narrative and operative order

**Source role:** editorial metadata and judicial text

## JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

Y.K. Sabharwal, J.

## ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

## SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 10 PDF pages; SHA-256

af23149e531995480c191e167d1e7d79b601ffd2e3c895567a3f4103c9a27869. Original bytes preserved.

Complete unnumbered judicial text on physical pages 3–10/SCR 325–332, from the author line through the final answer and costs direction; preceding headnote, jurisdiction and appearances distinguished. Historical section/rule extracts and attributed High Court reasoning read. No adjacent judgment.

[Open cited source rendition](#)

The headnote on physical page 1/SCR 323 states that the High Court held for Revenue. The judicial narrative on physical pages 4 and 8/SCR 326 and 330 says it answered for the assessee; the final Supreme Court order allows Revenue's appeal. The note follows the judicial text and discloses the editorial conflict.; The printed judgment is unnumbered; SCR and physical-PDF pages are used rather than invented paragraph numbers.; The 50% running/maintenance estimate belongs to the Assessing Officer's decision; the Supreme Court's final order supplies no standalone numerical valuation formula.

Section 40A(5), including its expenditure/allowance ceiling and relevant definition of perquisite, and Income-tax Rules, 1962 rule 3(c), as reproduced for AYs 1975-76 and 1976-77. The quoted ceiling in section 40A(5)(c)(ii) and old motor-car table are historical text, not current thresholds. Section 40(c)(iii) appears in the quotation from Britannia, not as a separate issue decided for this bank.

## STATUTORY SCOPE

Historical provisions identified from the judgment only. No automatic mapping to the Income-tax Act, 2025 or certification of present statutory text.

## LATER TREATMENT

Source checked 2026-10-04. Comprehensive subsequent judicial and statutory treatment has not been verified. Only the expressly identified bounded comparisons have been checked. No current-law or Income-tax Act, 2025 mapping is certified.

## IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 10](#)

SHA-256: af23149e531995480c191e167d1e7d79b601ffd2e3c895567a3f4103c9a27869

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