

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 1218 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS.JUSTICE HARSHA DEVANI****and****HONOURABLE DR.JUSTICE A. P. THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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COMMISSIONER OF INCOME TAX (TDS)
Versus
OIL AND NATURAL GAS CORPORATION LTD

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Appearance:

MR MR BHATT, SENIOR ADVOCATE with MRS MAUNA M BHATT(174) for the Appellant(s) No. 1

MR SN SOPARKAR, SENIOR ADVOCATE with MR AKSHAT KHARE(5912) for the Opponent(s) No. 1

MRS SUMAN KHARE(2226) for the Opponent(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 17/03/2020

**ORAL JUDGMENT
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. By this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), the appellant - Commissioner of Income Tax (TDS) has called in question the order dated 16.3.2018 passed by the Income Tax Appellate Tribunal, Surat Bench, Surat (hereinafter referred to as “the Tribunal”) in ITA No.2436/Ahd/2014/SRT for assessment year 2010-11.

2. By an order dated 9.10.2018, this court had issued notice for final disposal to consider the following substantial question of law:

“Whether the Income Tax Appellate Tribunal was right in law in confirming the order of the Income Tax Appellate Tribunal (sic. Commissioner of Income Tax (Appeals)) deleting the additions made by the Assessing Officer under section 201(1) of the Income Tax Act, 1961, and consequential interest charged by the Assessing Officer in relation to the assessee’s payments to its employees under the head of uniform allowance?”

3. On 22.11.2010, a survey was conducted at the office premises of the assessee - Oil and Natural Gas Corporation Limited. During the course of the survey, it was noticed that the assessee had made payments under the head “uniform allowance”; however, the deductor had neither included this allowance to the total salary payments nor had he deducted tax at source (TDS) on such income. On these issues, additions

were made in the immediately preceding financial year 2009-10 under section 201(1) read with section 201(1A) of the Act. The Assessing Officer noted that there was no provision for granting exemption on the basis of self certification. He further noticed that reimbursement of uniform allowance was not being treated as taxable for the assessment year and the assessee had disclosed in writing that out of around 790 to 800 employees at Hazira, 752 employees had taken this reimbursement on the basis of self-certification and thus, it has not been included in the gross salary chargeable to TDS under section 192 of the Act for the financial year in question presuming that since the employees had given self certification, they might have incurred or would be incurring such expenditure. Therefore, no further check had been observed by the deductor as to whether they had actually incurred such expenditure or not and original/genuine and real bills and vouchers to this effect were not taken at the relevant point of time during the relevant financial year or thereafter. According to the Assessing Officer, there is no direct provision under which such exemption can be provided on the basis of self certification. He also found that all the 752 employees were given a sum of Rs.52,364/- uniformly in the year and this system of self certification was prevalent from years together unhindered. The Assessing Officer noted as to how all the employees would uniformly incur such expenditure irrespective of their post and necessity and as to how an employee would be in need of uniforms costing Rs.52,364/- every year and odd figures and that no direct proof had been taken by the employer and instead a simple format has been devised and all the employees were indiscriminately putting their claims of such huge cost of uniforms and their maintenance which was

not possible per employee even after use all the time and day and night. According to the Assessing Officer, such huge expenditure was not feasible and was highly disproportionate and that there was no justification on the part of the employer in incurring such huge expenditure. That even after paying such huge amounts, the Drawing Disbursing Officer (DDO) was treating this segment of income for the employees as exempt and holding these reimbursements as exempt. He further observed that the DDO had not called for bills and vouchers to examine the veracity of the claim of uniform allowance and had accepted the self certification given by the employees.

3.1 The Assessing Officer noticed that section 10(14)(i) of the Act provides that any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specially granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed to the extent to which such expenses are actually incurred for that purpose. According to the Assessing Officer, such allowances firstly become part of the salary and exempt to the extent of spending, but the assessee had not included these allowances as part of the salary and had not examined the aspect of actual expenditure and instead had taken self certification at the beginning of the financial year from all employees without verification of the claim to ascertain whether such expenditure had actually been incurred for the purpose. He further noted that section 192 of the Act casts a responsibility on the employer to deduct proper TDS from the salary of the employee. Salary includes allowances/reimbursements which are conditionally exempt. It is the

responsibility of the employer to ascertain the correctness of the claim of exemption of any allowance before allowing it as exempt. If the employer finds the claim of the employee to be correct, he can consider such claim while computing the taxable income and tax thereon; whereas in this case, the employer has allowed the blanket exemption to its employees without any verification. None of the employees on his own has added the allowances received to his own income in his individual income tax return and has claimed exemption under section 10(14)(i) of the Act, which shows that the government has lost revenue to that extent due to non-deduction of TDS by the employer.

3.2 On behalf of the assessee, it was contended that such reimbursement is exempt under rule 2BB (1)(f) of the Income Tax Rules, 1962 (hereinafter referred to as "the rules") read with section 10(14)(i) of the Act. However, the Assessing Officer was of the view that such reimbursement was completely out of the provisions of rule 2BB of the rules read with section 10(14)(i) of the Act. He, accordingly, treated reimbursement of Rs.3,92,67,843/- for 752 employees as taxable whereon TDS was not deducted by the DDO in the financial year 2010 and held that the same is required to be taxed now.

4. The assessee carried the matter in appeal before the Commissioner (Appeals). Before the Commissioner (Appeals) the assessee placed reliance upon CBDT Circular No.15 dated 8.5.1969 and submitted that similar issue, that is, reimbursement of uniform allowance on the basis of declaration by the employees had been decided in favour of

the assessee in its own case for its Baroda Division by the Income Tax Appellate Tribunal 'D' Bench, Ahmedabad in ITA No.184-185 and 1066 and 609 -611/Ahd/2010 for assessment year 2009-10. It was submitted that similar issue was decided in favour of the assessee in its own case by a decision dated 11.1.2013 in Tax Appeal No.152 to 154, 156 to 158, 283 to 286 and 329 to 331 of 2012 following the decision in the case of ONGC, Baroda.

4.1 The Commissioner (Appeals) held that there exists a circular of the Board enabling non-deduction of tax from the reimbursement of allowances on the strength of certificate of utilisation from the employees. He further observed that in any case the matter was decided in favour of the assessee in its own case for earlier years. Following the said decisions, the Commissioner (Appeals) has held that there was no liability for deduction of tax from the payments made to employees as uniform allowance on the strength of the certificate given by the employees for utilisation of the same. He, accordingly, held that the assessee cannot be said to be as assessee in default within the meaning of section 201(1) read with section 201 (1A) of the Act and deleted the payment of Rs.1,60,21,247/- raised under section 201(1) and 201(1A) of the Act.

5. The revenue preferred an appeal before the Tribunal. Before the Tribunal, it was contended on behalf of the revenue that the specified allowances under section 10(14)(i) of the Act are exempt to the extent these are actually incurred for that purpose; that uniform allowance had been allowed ignoring the fact that such claim had been allowed without fulfilling the conditions as laid down under section 10(14)(i) of the Act.

5.1 The Tribunal, after considering the submissions advanced on behalf of the respective parties, observed that the uniform given to an employee for using the same during his duty hours is presumed to be used for the purpose of employment only. When there was a circular of CBDT enabling the assessee for non-deduction of tax from the reimbursement of allowances on the basis of utilisation certificate of the employee, there was no liability on the part of the assessee for deduction of tax from payments made to the employees as uniform allowance. The Tribunal was of the opinion that the conclusion drawn by the Commissioner (Appeals) is correct and accordingly dismissed the appeal.

6. Mr. M.R. Bhatt, Senior Advocate, learned counsel for the appellant submitted that during the fringe benefit tax regime, the assessee treated uniform allowance as a perquisite; therefore, such uniform allowance cannot cease to be a perquisite. It was submitted that the fringe benefit tax provisions have been omitted from the assessment year commencing from the 1st day of April, 2010, that is, from assessment year 2010-11 vide Finance (No.2) Act, 2009 with effect from 1.4.2009, accordingly, the reimbursement of uniform allowance made by the assessee for assessment year 2010-11 was not governed by the provisions of section 115WB(E) of the Act and hence, the decision of the Tribunal in ITA No.184-185 and 1066 and 609-611/Ahd/2010 in the assessee's own case for assessment year 2009-10 is not applicable in the case of the assessee for assessment year 2010-11 and hence, the Tribunal was not justified in placing

reliance upon the said decision. It was submitted that the Commissioner (Appeals) has placed reliance upon the decisions of the Tribunal which were carried to the High Court in **Commissioner of Income tax v. Oil and Natural Gas Corporation Limited**, (2015) 61 taxmann.com 105 (Guj.), and the issue was decided in favour of the assessee. It was submitted that the said decision had been rendered in the context of fringe benefit tax (uniform allowance) in the context of provisions of section 17(2)(vi) and section 115 WB(2)E of the Act; whereas in the facts of the present court, the court is concerned with the exemption clause contained in section 10(14)(i) of the Act read with rule 2BB of the rules. It was submitted that, therefore, the said decision would have no applicability to the facts of the present case.

6.1 It was submitted that in case of the Ankleshwar Division of the assessee itself, there is a decision of this court on the question of absence of uniform whereby the court has held that no uniform was prescribed for the employees of the assessee. It was contended that therefore an incongruous situation has arisen whereby in respect of the very same issue, namely, whether the claim of uniform allowance is exempt section 10(14)(i) of the Act, this court has held that the claim is not admissible in the absence of uniform having been prescribed, whereas in respect of the same issue, the Tribunal has allowed such claim. According to the learned counsel, the entire facts are inbuilt even with regard to uniform not being prescribed and that the Tribunal has gone on the aspect of self-certification without going into the issue of non-prescription of uniform.

6.2 Reference was made to the above decision of this court in the case of ***Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income tax (TDS)***, 73 *taxmann.com* 273, wherein the court, in the context of section 10(14)(i) of the Act read with clause (f) of rule 2BB(1) of rules, had held that in the context of the statutory provisions, it was necessary to ascertain whether the employer had granted allowances to meet the expenditure incurred by the employer on the purchase or maintenance of uniform for wearing during performance of duties of an office or employment of profit. The court, in the facts of the said case, found that though previously uniform was prescribed by the ONGC, with effect from 16.11.1995, such prescription was done away with. On behalf of the assessee, reliance was placed upon the Circular dated 29.3.2010 which prescribed certain dress code to be followed by the employees. The court held that if for the sake of arguments it is accepted that the dress code as referred to in Circular dated 29.3.2010 or similar was prescribed during the period under consideration, it did not find that the same would qualify as prescription of a uniform. The court, accordingly, did not find any merit in the appeal and dismissed the same. It, however, clarified that the observations in the order are confined to the material on record. If the ONGC produces any other evidence in this respect in the assessment proceedings which may be pending at different stages, the authorities would take a view on the basis of the evidence that may be brought on record.

6.3 It was submitted that this court, in the assessee's own case, having come to the conclusion that ONGC had not prescribed any uniform for its employees, as a necessary

corollary it follows that in the absence of any uniform having been prescribed, payment made in respect of uniform allowance is not exempt under section 10(14)(i) of the Act. The Tribunal was therefore not justified in confirming the order of the Commissioner (Appeals) deleting the additions made by the Assessing Officer under section 201(1) of the Act and consequential interest charged by the Assessing Officer in relation to the assessee's payments to its employees under the head of uniform allowance.

6.4 It was further submitted the Commissioner (Appeals) as well as the Tribunal were not justified in placing reliance on Circular No.15 dated 8.5.1969 inasmuch as the clarification contained in the circular is only qua conveyance and cannot be enlarged to make it applicable to uniforms as that would amount to adding words to the clarificatory circular.

7. Mr. S.N. Soparkar, Senior Advocate, learned counsel for the respondent assessee, submitted that reliance placed by the appellant upon the decision of this court in ***Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income Tax (TDS) 73 taxmann.com 273***, is misconceived, inasmuch as, prescription of uniform has never been questioned in the facts of this case. It was submitted that whether or not a uniform has been prescribed is essentially a question of fact, and hence, the court cannot be called upon to invoke such facts which were never before the Tribunal.

7.1 It was submitted that whether uniform is prescribed or not was not in issue in the present case. What was in issue was the validity of self certification. Therefore, the whole

contention canvassed before this court regarding uniform not having been prescribed does not arise out of the impugned order. It was emphatically argued that therefore, the issue that is raised before this court is not coming out of the order of the Tribunal as it was not even the case of the department that there was no uniform.

7.2 Reliance was placed upon the decision of this court in **Assistant Commissioner of Income Tax v. Ashima Syntax Ltd.**, (2001) 251 ITR 133 (Gujarat), wherein the court noted that in that case the revenue had contended that the assessee having capitalised the expenditure in the books of account of the company, the company cannot claim depreciation. However, this was not the issue raised before the Tribunal and there was no finding recorded by the Tribunal in this behalf. The court held that as the issue was not arising out of the order rendered by the Tribunal, it would not be open for the revenue to contend the said submission.

7.3 Reliance was also placed upon the decision of the Punjab and Haryana High Court in **Echo Shella v. Commissioner of Income Tax-I Chandigarh**, [2007] 293 ITR 234 (P&H) wherein the court held thus:

“5. The only submission made by the counsel for the appellant is that while confirming the impugned addition, the expenses on electricity labour, etc., have not been considered by the authorities below. A perusal of the orders of all the authorities below show that no such claim was made at any stage. Accordingly, the same cannot be permitted to be raised at this stage before this court. It is quite evident that the rates at which the valuation was made, were supplied by the partner of the assessee-firm itself. So to state that there was error in

the calculation is neither here nor there. Once the assessment of the valuation has been made as per the material supplied by the assessee himself, there is no question of challenging the same either on the ground that the same is incorrect or that the assessee was not given proper opportunity to explain the same”.

7.4 Reliance was placed upon the decision of the Delhi High Court in **Commissioner of Income Tax v. Indocount Finance Ltd.** [2004] 271 ITR 215 (Delhi) wherein the court held thus:

“3. We are unable to agree with learned counsel. We find that before the first appellate authority it was specifically pleaded on behalf of the assessee that there was no difference in the use of trucks by the assessee as owner on hire or in giving the trucks to some other party for using them “in their business on hire”. The first appellate authority has not commented adversely on the said plea. Even before the Tribunal it was never pleaded that the leased out trucks were not used in the business of hire. It is now too late in the day for the Revenue to raise such an issue for the first time in this appeal, which, having regard to the limited jurisdiction of this Court under section 260A of the Act, cannot be permitted. It was then contended by learned counsel for the Revenue that the Supreme Court has now issued notice in some of the special leave petitions filed by the Revenue on a similar issue.”

7.5 Reference was also made to the decision of the Madhya Pradesh High Court in **Commissioner of Income Tax v. Smt Kiran Devi Kailashchand**, [2006] 286 ITR 612 (MP), wherein the court held that it is a settled principle of law that a question of law framed at the instance of the appellant in an appeal filed under section 260A of the Act must arise out of the order impugned in the appeal. It is only then that the High Court exercising powers under section 260A as an appellate

court gets the jurisdiction to decide the question so framed. In other words, there has to be a first finding recorded by the Tribunal on the question framed against the appellant in the impugned order. It is only then that the appellant becomes entitled to assail the finding in appeal under section 260A by getting the question framed on such adverse findings recorded by the Tribunal. In the absence of any such finding being recorded by the Tribunal, the appellant has no right to raise such plea.

7.6 It was submitted that in the light of the settled legal position as enunciated in the above decisions, the question as to whether or not uniform had been prescribed by the assessee being essentially a question of fact, which had not been raised before the Tribunal, does not arise out of the impugned order, and hence, it is not permissible for the revenue to raise such a plea.

7.7 As regards the applicability of Circular No.15 dated 8.5.1969, it was submitted that the circular is clear, namely that self certification is permissible. It was submitted that in case of an individual employee, the Assessing Officer of the concerned employee can examine the validity of the claim of exemption under section 10(14)(i) of the Act qua the uniform allowance if the self certification is found to be doubtful. It was submitted that insofar as the employer is concerned, he is only concerned with deduction of tax at source, provided the income is taxable. If the employee concerned, certifies that he has incurred expenditure towards uniform allowance, which is exempt under section 10(14)(i) of the Act read with clause (f) of rule 2BB(1) of the rules, such self certification is good

enough for the employer not to deduct tax at source, though it does not grant immunity to the employee if the claim is incorrect. In support of such submission, the learned counsel placed reliance upon the decision of this court in **Commissioner of Income-tax v. Oil & Natural Gas Corporation Ltd.**, [2002] 254 ITR 121 (Guj.), reference to which shall be made subsequently.

8. In rejoinder, Mr. M.R. Bhatt, learned counsel for the appellant submitted that even as per paragraph 21 of the decision of this court in **Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income tax (TDS)**, 73 taxmann.com 273, liberty was granted to the assessee to produce evidence in respect of the assessment proceedings pending at different stages. Therefore, the assessee could have produced evidence in this case; however, no such facts have come on record. It was, accordingly, urged that the matter requires consideration on the questions as proposed or as may be formulated by this court.

9. As can be seen from contentions raised by the learned counsel for the appellant, strong reliance has been on the decision of this court in **Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income tax (TDS)**, 73 taxmann.com 273, therefore, at the outset, it may be necessary to refer to the same to understand the nature of the controversy before the court in that case so as to ascertain as to whether or not the same is applicable to the facts of the present case.

10. In **Oil and Natural Gas Corporation Ltd. v. Assistant**

Commissioner of Income tax (TDS), 73 taxmann.com 273, the issue involved pertained to requirement of deducting tax at source by the assessee as an employer on the payments made to the employees under the heading of uniform allowance. The assessment year was 2010-11, which is the assessment year in question in the present case also. It was the case of the Assessing Officer that no uniform was prescribed by the employer and that, therefore, the payment of allowance under the head of uniform allowance would not fall within the exemption clause of section 10(14)(i) of the Act read with rule 2BB of the rules. The Assessing Officer had noted that during the survey operation, the employees were not wearing any uniform and in his statement, the Senior Finance and Accounts Officer of ONGC, had stated that though previously uniform was prescribed by ONGC, with effect from 16.11.1995, such prescription was done away with and that despite discontinuance of uniform at work place, ONGC continued to pay uniform allowance, which was later adjusted toward employees' contribution to the pension fund. It was in the aforesaid factual backdrop that this court upheld the order of the Tribunal which had held that as no uniform was prescribed by the ONGC, payment made towards uniform allowance was not exempt under section 10(14)(i) of the Act .

10.1 Thus, in the facts of that case, it was the specific case of the revenue that as no uniform was prescribed by the ONGC, the uniform allowance granted by it was not exempt under section 10(14)(i) of the Act.

11. Section 10 of the Act provides that the total income of a previous year of any person falling in any of the clauses set out

thereunder shall not be included. Sub-clause (i) of clause (14) thereof, as it stood at the relevant time, reads thus:

“(14) (i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose.”

12. Rule 2BB of the rules prescribes the allowances for the purpose of clause (14) of section 10. The allowances enumerated under sub-rule (1) thereof are prescribed for the purposes of clause (14) of section 10. The allowance prescribed by clause (f) of rule 2BB(1) of the rules is any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit.

13. Thus, if any allowance has been granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties during the course of employment, it is covered by the exemption clause contained in section 10(14)(i) of the Act.

14. In the present case, while passing the order under section 201(1) read with section 201(1A) of the Act, it is not the case of the Assessing Officer that no uniform has been prescribed by the assessee for its employees and, therefore, the amount paid towards uniform allowance is not exempt section 10(14)(i) of the Act. According to him, the requirements of section

10(14)(i) of the Act have not been satisfied as the assessee has not proved that the expenses claimed by it are actually incurred for that purpose as the assessee has placed reliance upon self certification on the part of the employees without actual proof of such expenditure having been produced by them.

15. On behalf of the appellant, the learned counsel has contended that the entire facts are inbuilt, even with regard to the uniform not being prescribed, and that the Tribunal had erred in going into the aspect of self certification without going into the issue of non-prescription of uniform.

16. The facts have been extensively referred to hereinabove. A perusal thereof makes it evident that the sole issue raised by the Assessing Officer was that the assessee had claimed expenditure incurred towards uniform allowance as exempt section 10(14)(i) of the Act on the basis of self-certification by the concerned employees without calling for any proof in the nature of bills, vouchers etc. regarding such expenditure having been actually incurred and without due verification. No ground has been raised to the effect that as no uniform had been prescribed, no claim towards uniform allowance could have been allowed.

17. In the case of the respondent assessee itself, this court in ***Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income tax (TDS)***, 73 taxmann.com 273, has upheld the order passed by the Tribunal upholding the order of the Commissioner (Appeals) that as no uniform had been prescribed by the ONGC, which had merely prescribed a

dress code, the payment of allowances under the heading of uniform allowances would not fall within the exemption clause contained in section 10(14)(i) of the Act. However, while in the facts of the present case, the assessee is the same and the assessment year is also the same, as noted hereinabove, the question of prescription of uniform or otherwise was not subject matter before the Tribunal. It is not the case of the Assessing Officer in the order under section 201(1) read with section 201(1A) of the Act nor was it the case of the revenue before the Commissioner (Appeals) that as no uniform had been prescribed, the assessee was not entitled to claim exemption section 10(14)(i) of the Act towards uniform allowance. The sole ground on which the Assessing Officer sought to deny exemption of uniform allowance section 10(14)(i) of the Act is that the employees had given self-certification and the assessee had not taken original, genuine real bills and vouchers to this effect at any point of time during the relevant financial year and there was no provision which permitted the assessee to exemption on the basis of self certification. The Assessing Officer was also of the view that there was no justification for such huge expenditure towards uniform allowance on a yearly basis.

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18. Before the Tribunal, the appellant had contended that the specified allowances under section 10(14)(i) of the Act are exempt to the extent these are actually incurred for that purpose; and that the Commissioner (Appeals) had erred by allowing uniform allowance without considering whether such claim fulfilled the conditions as laid down in section 10(14)(i) of the Act. Therefore, the scope of the present appeal is also

limited to these issues only.

19. On behalf of the revenue, it has been contended that the second ground raised before the Tribunal would take within its fold the requirement of prescription of a uniform, and that the expenditure had to be incurred towards such prescribed purpose; whereas in the facts of the present case, the Tribunal, without deciding the basic issue as to whether uniform had in fact been prescribed, dismissed the appeal by following its earlier decisions which related assessment years when the fringe benefit tax regime was in force.

20. As can be seen from the impugned order, on behalf of the revenue only two grounds as referred to hereinabove had been raised and the learned Departmental Representative had submitted that the Commissioner (Appeals) had erred in allowing the uniform allowance ignoring the fact as to whether such claim fulfilled the conditions laid down in section 10(14)(i) of the Act. In fact a perusal of the entire record of the case including the orders of the Assessing Officer as well as the Commissioner (Appeals) shows that nowhere has any issue been raised regarding uniform not having been prescribed by the assessee. The only question before the authorities was that the assessee had claimed exemption towards uniform allowance under section 10(14)(i) of the Act on the basis of self-certification given by the employees without verifying whether such expenditure had actually been incurred. Under the circumstances, the decision of this court in the case of ***Oil and Natural Gas Corporation Ltd. v. Assistant Commissioner of Income tax (TDS)***, 73 taxmann.com 273,

would not be applicable to the facts of the present case, the same having been rendered in the context of totally different facts. In the absence of any factual foundation with regard to there being no prescription of uniform by the assessee having been laid in the present case, such question does not arise out of the impugned order of the Tribunal, and hence, it is not permissible for the appellant to raise such plea at this stage.

21. The order of the Tribunal may, therefore, be tested on the basis of the facts as emerging from the record. As is evident on a perusal of the order of the Commissioner (Appeals), on behalf of the assessee, reliance was placed upon Circular No.15 dated 8.5.1969 issued by the CBDT enabling the assessee for non-deduction of tax from the reimbursement allowance on the basis of utilisation certificate of the employee. The relevant extract of the said circular has been produced in paragraph 4.2 of the order of the Commissioner (Appeals) and reads thus:

“1. A reference is invited to the Press Note issued by the Ministry of Finance (Central Board of Direct Taxes) on 25.5.1968, relating to the allowance of standard deduction for maintenance expenditure and wear and tear in case of salaried taxpayers owning conveyances and using them for the purpose of their employment.

2. In the absence of the definition of the phrase “used for the purpose of employment” in the Income Tax Act, 1961, a doubt has been expressed as to the meaning of this phrase and the checks which can be applied for the proper verification of the claim, by the disbursing officers.

3. For the purpose it is hereby clarified that a declaration from the employee that the conveyance is owned by him and is being used by him for the purposes of employment may be considered adequate by the disbursing officer for the purpose of calculation of tax deductible at source under section 192."

22. At this juncture reference may be made to the decision of this court in **Commissioner of Income-tax v. Oil & Natural Gas Corporation Ltd.**, [2002] 254 ITR 121 (Guj.), wherein the court held thus:

"5. We are of the opinion that in the facts and circumstances found by the tribunal no question of law referable to this court arises as the answer is evident. The tax at source in the case of an employee in receipt of salaries is deducted on the basis of estimate of income under the head "Salary" emanating from the employer. That estimate also include a fair estimate by the employer whether any amount paid by him is not likely to be subjected to tax under any provisions of the Income-tax Act. As we have noticed above, the evidence regarding operation of the scheme clearly attracted the provisions of sec. 10(14) inasmuch as reimbursement is granted for use of one vehicle owned and possessed by the employee for expenses incurred in undertaking official journeys and the payment is made on employee issuing a certificate that he has incurred more expenses than the amount which is being reimbursed to him at the end of the month. The fact that reimbursement upto a maximum limit and not more does not detract from the fact that expenses are being paid as far as employer is concerned towards reimbursing actual expenses incurred by the employee in undertaking official journeys upto the extent amount is actually reimbursed. Nor the fact that the employee, during the course of his assessment, is not found entitled to full benefit u/s 10(14), does in any way reflect on the estimate of income tax payable on income

of the employee at the time when such amount is paid. Whether an employee actually incurs such amount for the official purposes is relevant for assessment of employee because exemption operates in his terms and conditions of availing such exemption that is to be fulfilled by him whether the employee is able to substantiate his claim to exemption has no bearing on estimate of income liable to tax to be made by the employer.

6. These findings do not give rise to any question of law. The fact that ultimately on the assessment of employees they have been found in not utilising the full amount received by them from the employer does not reflect in any manner on the estimate of the employer at the end of each month about the income of the employee receiving from his employer liable to tax as per the mark it bears."

23. In terms of the above Circular No.15 dated 8.5.1969, for the purpose of calculation of tax deductible at source under section 192, self-certification on the part of the employee that the conveyance was owned by him and being used by him for the purposes of employment was adequate. The present case relates to uniform allowance, which as noticed earlier is exempt from tax under section 10(14)(i) of the Act read with rule 2BB(1)(f) of the rules to the extent to which such expenses are actually incurred for that purpose. Under the Act, the liability to the employer is to deduct tax at source to the extent of the taxable income of the employee. If any part of such income is exempt, there is no liability to deduct tax at source from such income. Since liability to pay tax under the Act is of the individual employee and the liability on the part of the employer is only to deduct tax at source, Circular No.15 dated 8.5.1969 provides that self certification on the part of the employee is sufficient for the disbursing officer for calculation of the tax deductible at source. While the said

circular relates to conveyances, the underlying principle can well be applied even in the case of uniform allowance. Therefore, if an employee gives a certificate certifying that he had incurred certain expenditure towards uniforms and maintenance thereof, insofar as the disbursing officer is concerned, that would be adequate while calculating the tax deductible at source. If the Assessing Officer has any doubt about the claim made by any individual employee, he can always take upon the issue during the course of assessment proceedings of such employee, inasmuch as, as rightly submitted by the learned counsel for the respondent, self certification is good enough for the employer not to deduct tax at source, it does not grant any immunity to the employee if the claim is incorrect. As held by this court in **Commissioner of Income-tax v. Oil & Natural Gas Corporation Ltd.**, [2002] 254 ITR 121 (Guj.), whether an employee actually incurs such amount for official purposes is relevant for assessment of such employee because the exemption operates in his terms and conditions of availing such exemption that is to be fulfilled by him. Whether the employee is able to substantiate his claim to exemption has no bearing on the estimate of income liable to tax to be made by the employer. Under the circumstances, there is no legal infirmity in the impugned order passed by the Tribunal in placing reliance upon the above circular for holding that self certification on the part of the employees was adequate for the assessee not to deduct tax from the reimbursement allowance towards expenditure incurred for uniforms.

24. In the light of the above discussion, this court is of the view that the impugned order passed by the Tribunal does not

suffer from any legal infirmity warranting interference. The substantial question framed by this court while issuing notice is answered in the affirmative, that is, in favour of the assessee and against the revenue. The Income Tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) deleting the additions made by the Assessing Officer under section 201(1) of the Income Tax Act, 1961, and consequential interest charged by the Assessing Officer in relation to the assessee's payments to its employees under the head of uniform allowance. The appeal, therefore, fails and is accordingly dismissed with no order as to costs.

(HARSHA DEVANI, J)

(A. P. THAKER, J)

Z.G. SHAIKH

