

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 368 of 2016
TO
TAX APPEAL NO. 371 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

OIL AND NATURAL GAS CORPORATION LTD....Appellant(s)

Versus

ASSISTANT COMMISSIONER OF INCOME TAX(TDS)....Opponent(s)

Appearance:

MR.VANKATRAMAN, LD. SENIOR ADVOCATE WITH MR AKSHAT KHARE, ADVOCATE for the Appellant(s) No. 1

MRS SUMAN KHARE, ADVOCATE for the Appellant(s) No. 1

MR.MANISH BHATT, LD. SENIOR ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 15/09/2016

**COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. These tax appeals contain the same assessee viz. Oil and Natural Gas Corporation ('ONGC' for short). They involve identical question, concerning the same assessment year 2010-11. Four different appeals because of four different units of ONGC being involved with the Revenue. We may record facts from Tax Appeal No.368 of 2016 for convenience.

2. Appellant-assessee has challenged the judgment of Income Tax Appellate Tribunal ('ITAT' for short) dated 04.09.2015, by which, the assessee's appeal against the judgment of Appellate Commissioner came to be dismissed. Briefly stated, the issue pertains 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. During the financial year 2008-09, a survey operation was carried out by the Revenue at the premises of ONGC, during which, certain materials were collected concerning

lapses in uniform allowance and the employees not wearing such uniforms if so sponsored by the employer. For the assessment year 2010-11, the Assessing Officer confronted the assessee with the assessee not having deducted tax at source on such benefits given to the employees. During the financial year relevant to the said assessment year, according to the Assessing Officer, there was no uniform prescribed by the employer and that therefore the payment of allowances under the heading of uniform allowance would not fall within the exemption clause of section 10(14)(i) of the Income Tax Act, 1961 ('the Act' for short) read with Rule 2BB of Income Tax Rules, 1963, ('the Rules' for short).

3. During the assessment, the Assessing Officer recorded a statement of one Shri R.P.Bhatt, senior finance and accounts officer of ONGC, stationed at Khambhat, who had appeared before him in response to a letter dated 15.02.2010 written to ONGC to file monthly details on various payments. The Assessing Officer noted that in such statement, Shri Bhatt had contended that the ONGC has prescribed uniform upto 16.11.1995, which was sky blue shirt and gray trouser

and black shoes. The employees were issued cloth for the dress and the employees would get it stitched themselves, the stitching charges would be reimbursed. However, after 11.11.1995, the uniform prescribed by the ONGC for the employees was discontinued. It was decided by the company in a meeting between the management and association and the unions that such uniform be discontinued, but the benefit of uniform allowance would continue. 70% thereof would be paid as uniform allowance, 20% as canteen subsidy and 10% as washing allowance. The amount of such allowances was adjusted towards additional contribution to post-retirement benefit scheme.

4. On the basis of such materials on record, the Assessing Officer held that the employer had not prescribed any uniform and that the payment made to the employees as uniform allowances would not be covered by the exemption clause contained in section 10(14)(i) of the Act. He referred to the dictionary meaning of term 'uniform' as to conclude that unless there was a precise dress code with colour patterns, the same would not qualify as a uniform. He held that the assessee being liable to deduct tax at source, had

failed to do so in terms of section 194 of the Act. He disallowed the expenditure incurred by the employer in paying such allowances.

5. ONGC carried the matter in appeal before the Commissioner and contended that the employees did wear uniforms to maintain decorum at the office. The finding of the Assessing Officer that during survey, many employees were found not wearing the uniform, would be a matter of disciplinary action. Recording the statement of Shri R.P.Bhatt, senior finance and accounts officer, it was merely stated that 'he was not aware of human resource policy of appellant company. Further, merely because the same amount equivalent to uniform allowance was envisaged in PRBS, could not lead to adverse inference'.

6. The Appellate Commissioner confirmed the view of the Assessing Officer, observing that if the appellant's interpretation of term 'uniform' were to be accepted, in every office any dress worn by the employees would qualify as uniform. He noted that the assessee had not disputed the fact that prescribed uniform was done away by ONGC since the year 1995.

7. The assessee carried the matter in further appeal before the Tribunal. At one stage, the Tribunal dismissed the appeal. The assessee, however, persuaded the Tribunal to revive the proceedings on the ground that certain important documents could not be placed before the Tribunal. In the second round before the Tribunal, the assessee produced a circular dated 29.03.2010 pertaining to reimbursement towards cost of purchase, stitching and maintenance of uniform, 'compulsory wearing of uniform'. The Tribunal however, was of the opinion that the said circular did not prescribe any uniform. It merely prescribed a dress code. The payment was therefore not exempt under section 10(14)(i) of the Act. The Tribunal therefore dismissed the appeal, upon which, the present appeal came to be filed.

8. Facts in all appeals are common.

9. Appearing for the ONGC, learned counsel Mr. N.Vankatraman raised following contentions.

I. The Tribunal erroneously placed reliance on the said circular dated 29.03.2010 when the issue pertained to the assessment year 2010-11.

II. The ONGC had prescribed uniform for both male as well as female employees under a circular dated 05.12.1987. This circular unfortunately could not be placed on record earlier. If therefore, an opportunity is granted, the ONGC could place the same on record and persuaded the Tribunal to take a different view.

III. The survey operation had taken place during the financial year 2008-09 and therefore, would have no bearing on the present assessment proceedings.

IV. Shri R.P.Bhatt, senior finance and accounts officer of ONGC, did not have full information about prescription of uniform and in any case, his statement was not recorded on oath.

V. The ONGC had reimbursed uniform allowance without deduction of tax only in cases where the employees had given a declaration of having purchased such uniform. Wherever such declaration was not made, tax was deducted at source.

10. On the other hand, learned counsel Shri Manish

Bhatt for the department opposed the appeals contending that;

I. The ONGC itself produced the said circular dated 29.03.2010. In absence of such a circular, there was nothing on record to suggest that ONGC had prescribed any uniform for its employees. In fact, the statement of Shri R.P.Bhatt, senior finance and accounts officer of ONGC, would show that previous prescription of uniform was done away with effect from 16.11.1995. During survey, the employees were not found wearing any uniform.

II. The ONGC was granted sufficient opportunity to produce necessary materials on record, no further chance should be given to correct the mistakes, if any committed. In any case, the statement of Shri R.P.Bhatt would show that even if uniform was prescribed under earlier circular dated 05.12.1987, the same was discontinued after 16.11.1995.

III. The term 'uniform' though not defined under the Act or the Rules, carries a specific meaning. A dress code would not include the term

'uniform'.

11. It is undisputed that on any salary or allowance paid by the ONGC to its employees, there would be a requirement of deducting tax at source as per the prescribed rates. If however, any such payment is exempt from tax, such requirement would not apply. It is in this context, section 10(14)(i) of the Act becomes relevant which reads as under:

"10(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 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;"

Rule 2BB of the Rules prescribes allowances for the purpose of clause 14 of section 10. Sub-rule (1) thereof prescribes various allowances for the purpose of clause (i) of sub-section (14) of section 10. Clause (f) of rule 2BB(1) of the Rules reads as under:

(f) 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.

12. In context of such statutory provisions, it

becomes 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 Assessing Officer noted principally two things, one that during the survey operation, the employees were not wearing any uniform, two; in his statement, the senior finance and accounts officer of ONGC stated that though previously uniform was prescribed by the ONGC, with effect from 16.11.1995, such prescription was done away with. He in fact, went on to state that despite discontinuance of uniform at work place, ONGC continued to pay uniform allowance, which was later on adjusted towards employees' contribution to the pension fund. The Commissioner (Appeals) noted that though, the ONGC tried to turn down the statement of Shri R.P.Bhatt by suggesting that he was not a human resource person, the ONGC nowhere contended his statement that after 16.11.1995, prescription of uniform was done away with was an incorrect statement. We have noticed the stand of ONGC before the Commissioner (Appeals) in which, in fact, it was

suggested that if a matching amount was deposited towards the employees' contribution to the pension fund, the same would still not mean that no uniform was prescribed. It would therefore appear that ONGC also did not dispute the later portion of Shri R.P.Bhatt's statement that such allowance was adjusted towards employees' liability to pension fund.

13. Before the Tribunal, upon one round of remand, the ONGC produced the circular dated 29.03.2010. This circular prescribed certain dress code to be followed by the employees as under:

" The reimbursable amount for purchase of uniform and stitching/maintenance thereof is reimbursed to the employees every year on prescribed rate.

2. According to the instructions issued from time to time, all employees are compulsorily required to wear the uniform while on duty. It has however been observed that in spite of repeated instructions, employees are not wearing uniform on duty. Nonadhering to the existing guidelines on uniform/dress code has been viewed seriously.

3. Therefore, it has been decided that all employees who are reimbursed cost of uniform shall compulsorily maintain dress code while on duty. The dress code to be followed by the employee is annexed.

4. It is enjoined upon all employees to follow the prescribed Dress Code failing which appropriate action shall be taken

against the concerned employee.

(Sundar Lal)
GGM-Chief, ER

Distribution:
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Annexure

DRESS CODE TO BE FOLLOWED BY THE EMLPLOYEES
IN ONGC

1. FOR MEN

(A) Shirts

-Full/half sleeved well-fitted, buttoned and ironed formal shirts.

-Loud checks/printed shirts should be avoided.

-Striped shirts are permissible.

(B) Trousers

-Formal styled trousers.

-Cargo trousers should not be worn

(C) Ties and belts

-Ties, if worn, should be matching with the shirts/trousers.

-Cuff link if worn, must be understated & elegant.

-Belts should be sober.

(D) Footwear

-Formal leather shoes.

-Shoes, when worn, should be worn with socks.

-In places which experience high temperatures, employees can wear sandals instead of shoes.

(E) Suits, Blazers, Coats & Jackets

(Optional)

-These should be formal & understated.

-Big and bright buttons & loud patterns on suits are to be avoided.

2. FOR WOMEN

A) Ironed sarees of appropriate colors, worn neatly and appropriately.

B) Traditional Salwar Kameez

C) Ironed western business suits.

D) Formal ladies shirts with tailored dress/formal trousers.""

14. The Tribunal was of the opinion that this circular did not prescribe what can be categorized as uniform and resultantly dismissed the appeal.

15. It is true that the circular dated 29.03.2010 did not cover the period under consideration. However, we cannot find fault with the Tribunal in referring to such circular. Firstly, the circular was produced on record and relied upon by the ONGC. This would not however mean that the Tribunal could have held the issue against the assessee on the basis of such a circular if it applied during a period post the financial year in question. But, if we eliminate this circular from record, there was nothing else suggesting that the ONGC did prescribe any uniform for its employees, at least for the period under consideration. If the stand of the ONGC was that the circular dated 05.12.1987 held the field, it ought to

have produced such circular on record. As noted, the Revenue had collected materials to suggest that there was no uniform prescribed. Statement of senior officer of the ONGC suggested that prescription for uniform made in the past was withdrawn since 1995. If the assessee desired to rebut such material, it had to produce necessary evidence in this respect. Having failed to do so, ONGC cannot criticize the Tribunal for referring to the circular dated 29.03.2010, which the ONGC itself desire to rely upon.

16. An alternative submission was made to the effect that the dress code at the work place would qualify as uniform. We find two difficulties in accepting this submission. Firstly, there is nothing on record to suggest that there was any such dress code prescribed before the said circular dated 29.03.2010 was issued. In absence of any evidence, it is not possible for us to ascertain the nature of dress code and its effect. Even if we proceed on the basis, for the sake of argument that the dress code as referred to in circular dated 29.03.2010 or similar was prescribed during the period under consideration, we do not find that the same would qualify as prescription of a

uniform. We have reproduced the relevant portion of the circular dated 29.03.2010. Under this circular, the employer prescribed a dress code for male employees insisting that they must wear shirt which may be half or full sleeve. It should be buttoned and ironed, though stripe would be permissible, loud checks or printed shirts should be avoided. The employees would wear trousers of formal size and would not be permitted to wear cargo trousers. If ties are worn, they should match with the shirts and trousers, belts should be sober and footwear should be formal. Under certain circumstances, however, employees could wear sandals instead of shoes. For women, it was prescribed that they should wear ironed sarees of appropriate colors or traditional salwar kameez or ironed western business suits or formal ladies shirts with tailored dress or formal trousers.

17. These specifications, undoubtedly fit the common parlance meaning of "dress code" which is often referred to as the minimum standard of dressing depending on the place or occasion and can carry a wide range of choices at the command of the person concerned, of course, within certain parameters which

would essentially exclude a certain dressing which is considered too informal or inappropriate for the occasion rather than to specify a precise set of clothes.

18. On the other hand, term 'uniform' in the context of dressing carries a vastly different connotation and would necessarily include precise instructions as to the dress, design, and also colours which will achieve a uniformity in dressing at a work place or at the place of study or some such collection of group of persons belonging to by and large a common class. The term uniform has been explained in the Webster's Third New International Dictionary (unabridged) as: *marked by lack of variation, diversity, change in form, manner, worth or degree; marked by complete conformity to a rule or pattern or by salient detail or practice; marked by unvaried and changeless appearance.* In the context of dressing, the term 'uniform' has been described in this dictionary as dress of a distinctive design or fashion adopted by or prescribed for members of a particular group (as an armed service, an order, or a social or a work group) and serving as a means of identification.

19. It can thus, be seen that the term 'uniform' in the context of dressing carries a precise meaning and a meaning which is entirely different from a far more broader concept of a general dress code.

20. We have noticed, the counsel for the assessee had also requested for remand so that the circular dated 05.12.1987 could be produced on record. In the past, the Tribunal had granted such opportunity, despite which this circular was not produced. No further opportunity need to be given now.

21. Under the circumstances, we find no merits in these appeals. The same are dismissed. Before doing so, we may clarify that our observations are confined to the materials 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 evidence that may be brought on record.

22. All appeals disposed of accordingly.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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