



Workplace dress code prescribed by employer does not qualify as a uniform; such allowance is not eligible for tax exemption

Background

The allowance paid by an employer to its employees for the purchase or maintenance of a uniform is eligible for tax exemption¹ in the hands of the employees under the Income-tax Act, 1961 (the Act). Recently, the Gujarat High Court (the High Court) in the case of Oil and Natural Gas Corporation Limited² (the taxpayer) held that the dress code prescribed by an employer to be worn at the workplace cannot be equated to a uniform. Accordingly, the uniform allowance paid for the purchase/ maintenance of a dress code is not eligible for exemption from tax as a 'uniform allowance' and is hence liable for tax deduction at source (TDS) by the employer.

Facts of the case

- The taxpayer was required by the Assessing Officer (AO) to provide its employees' salary payment details and TDS on the same for the Assessment Year (AY) 2010-11.
- During the course of the assessment, an officer of the taxpayer submitted the following before the AO:
 - The taxpayer had earlier prescribed a uniform to its employees.
 - This uniform was done away with effective 16 November 1995.
 - However, based on an understanding with the unions, though the uniform was discontinued

the taxpayer agreed to provide the benefit of the uniform allowance to its employees in the form of: a uniform allowance (70 per cent), canteen subsidy (20 per cent) and washing allowance (10 per cent).

- The amount of these allowances was adjusted by the taxpayer towards the additional contribution by employees to post-retirement benefit schemes.
- The AO passed an assessment order disallowing the expenditure incurred by the taxpayer in respect of the uniform allowance paid to its employees on the following basis:
 - During the survey conducted by the AO in the premises of the taxpayer during the Financial Year (FY) 2009-09, the employees of the taxpayer were not found to be wearing a uniform.
 - A precise dress code with colour patterns needs to be prescribed in order to qualify as a 'uniform'.
 - The taxpayer had discontinued the uniform prescribed to its employees effective 1995. Hence, the uniform allowance paid to employees was liable for TDS by the taxpayer. Accordingly, expenditure incurred by the taxpayer in respect of such a uniform allowance was disallowed.

¹ Section 10(14)(i) of the Act read with Rule 2BB(1)(f) of the Income-tax Rules, 1962 (the Rules)

² Oil and Natural Gas Corporation Limited v. CIT (Tax Appeal 368 and 371 of 2016) – Taxsutra.com

- The taxpayer appealed before the Commissioner of Income-tax (Appeals) [CIT(A)] and contended the following:
 - Employees did wear uniforms at the workplace.
 - Employees not wearing a uniform, a finding by the AO during the survey, were subject to disciplinary action by the taxpayer.
 - The officer of the taxpayer who submitted details before the AO was not aware of its human resource policy.
 - The amount equivalent to the uniform allowance envisaged for the post-retirement benefit scheme could not lead to an adverse inference.
- The CIT(A) upheld the order of the AO on the following grounds:
 - The taxpayer's interpretation of the term 'uniform' was not acceptable. If it were to be accepted, any dress worn in any office would qualify as a 'uniform'.
 - The taxpayer did not dispute the statement made by its officer that the taxpayer had discontinued the uniform effective 1995.
- On an appeal by the taxpayer, the Income-tax Appellate Tribunal (the Tribunal) dismissed the appeal of the taxpayer. However, the taxpayer convinced the Tribunal to revive proceedings on the grounds that certain documents could not be placed before it.
- The taxpayer submitted before the Tribunal an internal circular dated 29 March 2010 with respect to reimbursement towards the cost of purchase, stitching, and maintenance of the uniform. The circular covered the following:
 - The rate at which uniform reimbursement would be provided to the employees.
 - Employees were compulsorily required to wear a uniform while on duty.
 - Employees receiving reimbursement of the cost of the uniform need to compulsorily maintain the prescribed dress code.
- Dress code for men and women.
- The Tribunal dismissed the appeal on the grounds that the said circular did not prescribe any 'uniform'.
- Aggrieved by the order of the Tribunal, the taxpayer went on to appeal before the High Court.
- The taxpayer submitted the following before the High Court:
 - The Tribunal had erroneously relied on the circular dated 29 March 2010 while the period in question was AY 2010-11.
 - The taxpayer had prescribed uniform to its employees (both male and female) vide a circular dated 5 December 1987. The said circular could not be placed on record. Therefore, if an opportunity were to be granted, the same could be placed on record and the Tribunal could be persuaded to take a different view.
 - The survey was conducted in the premises of the taxpayer was during the FY 2008-09. Hence, it would have no bearing on the assessment proceedings of AY 2010-11.
 - The officer who submitted details before the AO did not have full information about the uniform prescribed by the taxpayer and his statement was not recorded on oath.
 - The taxpayer had reimbursed uniform allowance to its employees only after taking a declaration from the employees to the effect that they had purchased a uniform. Where such a declaration was not made, the uniform allowance was made after TDS.
- The tax department contended the following before the High Court:
 - The circular dated 29 March 2010 was submitted by the taxpayer. In the absence of such a circular, there was nothing to suggest that the taxpayer had prescribed a uniform to its employees.

- The taxpayer was given sufficient opportunity to produce the necessary materials on record.
- The officer of the taxpayer submitted to the AO that effective 1995, the uniform prescribed to the employees was discontinued.
- The employees were not found wearing any uniform during the survey conducted in the taxpayer's premises.
- The term 'uniform' carried a specific meaning, though it has not been defined in the Act or the Rules. A dress code cannot include the term 'uniform'.
- The taxpayer made an alternative submission that the dress code prescribed would qualify as a uniform.
- The High Court could not accept such alternative submission on the following grounds:
 - There was nothing on record to suggest that there was any dress code prescribed prior to the circular dated 29 March 2010. Hence, in the absence of any evidence, it was not possible to ascertain the nature of the dress code.
 - Assuming that a dress code as in the circular dated 29 March 2010 or similar was prescribed for the AY 2010-11, such would not qualify as a 'uniform'.
 - The specifications in the said circular fit the common parlance of the term 'dress code' which is the minimum standard of dressing depending on the place or occasion. Such specifications would cover a wide range of choice of clothes, rather than specify a precise set of clothes.
 - The term 'uniform' in the context of dressing would necessarily include precise instructions as to the dress, design, and colours so as to achieve uniformity in a dress at a work place or place of study.
 - 'Uniform' in the context of dressing has been defined in the dictionary³ as a dress of a distinctive design prescribed for members of a particular group (as an armed service, order, or a social or a work group) and serving as a means of identification. The term 'uniform' carries a precise meaning which is entirely different from the broader concept of a dress code.

The High Court's ruling

- The taxpayer had not disputed the statement of its officer in relation to the amount paid as uniform allowance was adjusted towards the post-retirement benefit schemes as employees' contribution.
- The Tribunal cannot be faulted for relying on the circular dated 29 March 2010 as it was submitted before the Tribunal as part of the proceedings.
- Though the circular does not cover the period in question, if it were to be eliminated, there was nothing in support of the prescription of the uniform by the taxpayer to its employees.
- If the circular dated 5 December 1987 was still valid, the same should have been produced on record.
- The tax department had collected enough material to suggest that there was no uniform prescribed by the taxpayer to its employees.
- The statement made by the taxpayer's officer supports that the uniform prescribed earlier was discontinued effective 1995.
- The taxpayer needs to produce necessary evidence in order to rebut the above.

³ Webster's Third New International Dictionary (Unabridged)

- On the basis of the materials produced on record, the High Court dismissed the appeal of the taxpayer and upheld the order of the AO.
- However, the High Court also noted that in case the taxpayer produces any other evidence with regards to the assessment proceedings which are pending at various stages, the authorities would take a different view on the basis of such evidence.

Our comments

The High Court has clarified in this judgment what fits the definition of a 'uniform', which has not been defined in the Act or the Rules. The judgement explains how the term 'dress code' cannot be equated to a 'uniform'. This decision adds emphasis on having a clear-cut policy on a 'uniform', based on which employers may consider providing an allowance to its employees for the purchase/maintenance of such a uniform in order to claim tax exemption of such an allowance for its employees and including such allowance as an allowable expense in the hands of the employer.



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