IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD
"D" BENCH

Before: Shri D.K. Tyagi, Judicial Member and
Shri Anil Chaturvedi, Accountant Member

I.T.A. Nos.152 to 154, 156 to 158, 283 to 286 & 329 to 331 of 2012

A.Ys. 2006-07 to 08-09, 2006-07 to 08-09, 2006-07 to 09-10 & 2006-07 to 08-09 respectively

Oil and Natural Gas Corporation Ltd., Baroda PAN-AAACO1598A Appellant	Vs.	The A.C.I.T.(TDS), Baroda Respondent

I.T.A.Nos.266 to 269, 297 to 299, 301 to 303 & 305 to 307 of 2012

A.Ys.2006-07 to 09-10, 2006-07 to 08-09, 2006-07 to 08-09 & 2006-07 to 08-09 respectively

The A.C.I.T.(TDS), Baroda Appellant	Vs.	Oil and Natural Gas Corporation Ltd., Baroda PAN-AAACO1598A Respondent

Department by : Shri D.P. Gupta with Shri T. Sankar, D.Rs.
Assessee by : Shri S.N. Saporkar with Mrs. Urvashi Shodhan, A.Rs.

Date of hearing : 14.12.2012
Date of pronouncement : 11.01.2013

आदेश/ORDER

PER BENCH:

These cross appeals have been filed against the separate orders of ld. CIT(A) of different dates.

2. All these appeals belong to the same assessee, so they were heard together and for the sake of convenience are being disposed of by this common order.

3. First we will take up the assessee appeals. In all these appeals assessee has taken following effective common ground:-

> *"The ld. CIT(A) has erred in law and in facts and circumstances of the case in upholding the order passed by ACIT (TDS), Baroda whereby the appellant was held to be an assessee in default for not deducting tax at source from, inter-alia, reimbursement of cost of uniform, stitching charges, washing expenses, etc. made to its employees and was called upon to pay the tax allegedly short deduced from its employees u/s 201(1) and interest thereon u/s 201(1A) of the Income Tax Act, 1961.*

4. At the time of hearing both the parties agreed that issue is now covered in favour of the assessee and against the Revenue by the decision of the Tribunal in assessee's own case for the A.Y. 2009-10 vide ITA No.184/Ahd/2010 dated 16.11.2012 wherein on identical facts following was held:-

> *"11. In view of our above discussion and in view of this fact that FBT was actually paid by the assessee-company on the impugned expenditure on uniform, washing allowance etc., the same cannot be considered as perquisites in the hands of the employees and therefore, there is no liability of the assessee-company to deduct TDS therefrom.*
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> *12. Now, we examine the applicability of CBDT Circular No.8 of 2005 dated 29-08-2005 (supra). From the relevant question of this Circular i.e., question No.74 as per which, the question was as to whether FBT is payable on a expenditure incurred on providing safety shoes or uniforms or equipments to the employees or for the purpose of reimbursement of washing charges. Reply was this that any expenditure incurred for meeting the employer's statutory obligation under the Employment Standing Order Act, 1948 fall within the scope of exclusion in the explanation to clause-E of sub-section-2 of 115WB and therefore, to the extent, such expenditure is covered by this exclusion, FBT is not required to be paid. In the present case, we have seen that the expenditure incurred by the assessee in respect of uniform, washing charges etc., is not a statutory obligation of the assessee-company and therefore, it is not covered by the exclusion clause of Explanation to clause-E of sub-section 2 of section 115WB. The consequence of this is that the same is not perquisites as per section 17(2)(vi) of the IT Act. Now, we examine the applicability of the judgment of Hon'ble apex court rendered in the case of R & B Falcon (A) Pty. Ltd. (supra). In para-17 of this*

judgment, it is noted by Hon'ble apex court that FBT is new concept and the tax is to be levied on the fringe benefit provided or deemed to have been provided by any employer to employee @ 30% on the value of such fringe benefit. It is further noted by Hon'ble apex court that intention of the Parliament to tax the employer on the one hand for the expenditure for the benefit of the employees including entertainment etc., and on the other, when an employee is getting the perks are not to be taxed. Those who get direct or indirect benefit from the expenditure incurred by the employer, no tax is leviable. In para-30 of the judgment, it is also noted by the Hon'ble apex court that Parliament, in introducing the concept of fringe benefit, was clear in its mind that in so far as on the one hand, it has avoided imposition of double taxation i.e., tax both in the hands of employee and employer and on the other hand, it is intended to bring succor to the employer for offering some privilege, service facility or amenity, which was otherwise though to be necessary or expedient. From this observation of the Hon'ble apex court in this judgment and also from the relevant provisions of section 17(2)(vi) and 115WB(2) as reproduced above, it becomes very clear that on fringe benefit like uniform and washing allowance etc., provided by assessee to its employees otherwise than for a statutory obligation, is liable to FBT and same is not liable to income tax in the hands of the employee because the same cannot be considered as perquisites as per the provisions of section 17(2)(vi) of the Act. Once we come to this conclusion, it is abundantly clear that no TDS is required to be deducted by the employer from such expenditure incurred by the employer for the benefits of the employees. Accordingly, in the present case, we hold that TDS was not required to be deducted by the assessee-company from this expenditure incurred by it on providing uniform, washing charges and washing allowance etc. So this ground of assessee's appeal is allowed."

5. Respectfully following the above, this ground of the assessee is allowed.

6. Now coming to the appeal filed by the Revenue.

7. Ground No.1 which is common in all these appeals, except the amount, reads as under:-

"The ld. CIT(A) erred in law as well as facts of the case in deleting the order passed u/s 201(1) & interest charged u/s 201(1A) of the I.T. Act of Rs.1,03,35,957/- and Rs.55,29,721/- respectively, for AY 2006-07 by the Assessing Officer even though during the course of verification it was noticed that the assessee company was paid conveyance, maintenance, reimbursement expenditure (CMRE) to its employees every month based on their status, designation. Despite the fact the payment of CMRE was taxable as salary and employer

had not deducted TDS on the payment of CMRE was taxable as salary and employer had not deducted TDS on the same."

8. At the time of hearing both the parties agreed that the issue involved in these appeals is covered in favour of the assessee and against the Revenue by the order of the Tribunal in assessee's own case for the A.Y. 2009-10 vide ITA No.184/Ahd/2010 dated 16.11.2012 wherein following was held:-

"18. We have considered the rival submissions and perused the material on record and gone through the orders of authorities below. We find that this issue was decided by Ld. CIT(A) as per para-3.3 of his order, which is reproduced:-

3.3 I have considered the submission of the learned Authorized Representative, Remand Report of learned ACIT and reply of remand report of authorized representative and further considering the arguments of both the appellant and respondent and facts of the case. It is seen that the Conveyance Maintenance Reimbursement (CMRE) scheme was introduced in ONGFC to reimburse to employees the expenditure incurred by them on maintenance and use of their own vehicles in the performance of official duties and thereby reduce pressure on ONGC vehicles and maintenance cost thereof, thus saving a portion of expenditure, which otherwise could have been borne by the appellant. The CMRE is not blanket payment, but the reimbursement is for the actual amount incurred in maintaining and running the vehicle restricted to maximum amounts per month fixed by ONGC, taking various parameters into account. Each employee is required to submit his claim on monthly basis for the reimbursable running & maintenance expenditure incurred in the preceding month, in the prescribed form. The claims are submitted by employee on line by making necessary entries in the appellant's computerized system. It is also not true that all employees automatically become eligible for receiving CMRE payments. Rather, CMNRE is allowed only to those employees in respect of whom permission is granted by a competent authority to do so after applications are made by the employee's controlling officers, on a through scrutiny. In addition, employees are also allowed reimbursement once every year towards the cost of insurance incurred by them on the vehicles for which they have been allowed to claim CMRE. This reimbursement is allowed on production of receipt for payment of insurance premium and copy of insurance policy/cover note etc., Restrictions on payments when employees were on leave or absent from duties for more than 30 days and 60 days reveal that the contention of the AO that even when the vehicles were not used, the CMRRE was paid falls flat. There is a considerable merit in the submissions of the appellant that when the employees are on onshore duty for longer periods, then

expenses like insurance, maintenance expenses etc., are necessary to be reimbursed to employees coming under the scheme is acceptable. Even though may checks and balances were in vogue like selection of the employees coming under this scheme, procedure for reimbursements online claim by the employees etc. is there, for any shortcomings committed by the employees, the employee cannot be found fault with, rather it is for the AO assessing the employees to find out the correctness of the claim and in case of any default to take appropriate action. The fact that the employer is paying fringe benefit tax on CME cannot be ignored. Thus, taking the overall picture of the CMRE, there is no hesitation to hold such reimbursement to employees coming under the scheme as not part of the salary and accordingly no TDS is attracted in the hands of the employer. Hence, I am of the view that the Assessing Officer was no justified by treating the assessee in default u/s 201(1) and 201(1A) of the Act. Hence, the assessing officer is directed to delete the same i.e. the levies u/s 201(1) and 201(1A)."

9. Respectfully following the same, this ground raised by the Revenue in all the appeals is dismissed.

10. Second common ground, except the figure, taken by the Revenue in all the appeals read as under:-

"The Ld. CIT(A) erred in law as well as facts of the case in deleting the order passed u/s 201(1) & interest charged u/s 201(1A) of the I.T. Act of Rs.14,86,739/- and Rs.7,80,073/- respectively, for A.Y. 2006-07 by the Assessing Officer even though during the course of verification it was noticed that the holiday homes started by the company i.e. ONGC & such payments were paid to the employees to reimburse additional salary in the form of claim made on account of holiday home reimbursement which was only for non official & private purpose. These payments were made on individual basis which reveals the case of the assessee company is not covered under FBT & the same payment is a remuneration in addition to the salary taxable u/s 17(1)(iv) of the Income Tax Act."

11. The brief facts, as they emerge in respect of this ground, from the order of ld. CIT(A) are as under:-

"Appellant had a "Holiday Home Scheme" for the benefit of its employees under which holiday homes were to be created at certain designated places for rest and recreation of appellant's employees. Till the time of creation of holiday homes, as interim measure, subsidy was provided to employees and their family members when

they availed of holiday home assistance under the scheme. The employees were entitled to visit any place in India or abroad for holiday with family once in block of two calendar years for maximum of 10 days or every year for maximum of five days. Under the scheme, employees were granted reimbursement at the rate of full daily allowance for self and entitled members of family and paying guest charges as admissible irrespective of fact that whether they stayed in hotel or made own arrangement of stay. ACIT (TDS) was of the view that the payment under Holiday Home Scheme was purely for non official and private purpose and was in the nature of salary of the employee taxable u/s.17(1)(iv). It was not exempt u/s 10(14) and could not be considered to be fringe benefit u/s 10(14). ACIT (TDS) held that payment of FBT on this amount did not imply any concession to the appellant who had failed to discharge obligation of deducting tax at source."

12. In appeal ld. CIT(A) decided the issue in favour of the assessee and now the Revenue is in appeal before us.

13. At the time of hearing ld. counsel of the assessee relied on the order of ld. CIT(A) while ld. D.R. relied on the order of the A.O.

14. After hearing both the parties and perusing the record, we find that ld. CIT(A), while giving relief to the assessee has observed as under:-

"During the period, when FBT was applicable, appellant considered reimbursements to employees under holiday home scheme to be liable to FBT under section 115WB(2)(G), i.e. expenditure for use of hotel, boarding and lodging facilities. During the FBT regime, expenditure borne or reimbursed by employer on traveling, accommodation and other items for holiday availed of by employee or any member of his family was prescribed as a fringe benefit for the purpose of section 17(2)(vi) by Rule 3(7)(ii), only in respect of those employers, who were not liable to pay fringe benefit tax under Chapter XII-H of the Act. Rule 3(7)(ii) was inserted as above through Income tax (Fourteenth Amendment) Rules, 2007 w.e.f. 1.4.2008. Thus, as far as A.Yrs.2008-09 and 2009-10 are concerned, appellant's contention that the holiday home scheme could not be considered as perquisite u/s 17(2)(vi) in the hands of employees is acceptable. For A.Yrs. 2006-07 and 2007-08, since expenditure incurred by employers for holiday availed of by employees or their family members was not prescribed as a 'fringe benefit' for the purpose of section 17(2)(vi), it could not therefore be taxed as perquisite in employee's hands. However, the payment received under holiday home scheme would be non taxable in employee's hands only if it was actually and fully utilized towards

hotel, boarding and lodging facilities, etc on a holiday availed by self or family member. If in any employee's case, it is found that the payment in question was actually and/or fully not utilized towards holiday home scheme, it would constitute concerned employee's taxable salary. As far as appellant is concerned, due to payment of FBT and due to holiday home reimbursement being not a prescribed 'fringe benefit' for the purpose of section 17(2)(vi) from A.Yrs. 2006-07 to 2009-10, appellant is not to be treated as assessee in default u/s 201(1) in this regard. For A.Y. 2010-11 also, appellant is not to be treated as assessee in default subject to verification by the ACIT(TDS) that tax at source has already been deducted from Holiday Home reimbursements."

15. Since there is no dispute about the fact that FBT was paid by the assessee company on this expenditure also, hence, for the same reasons for which we have decided the issue raised by the assessee in its appeals in favour of the assessee, this issue is also decided in favour of the assessee and therefore, we feel no need to interfere with the order passed by ld. CIT(A) and the same is hereby upheld. This ground of the revenue is also dismissed.

16. In the result, Revenue's appeals are dismissed.

17. In the combined result, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order pronounced in open Court on 11.01.2013

Sd/-
(Anil Chaturvedi)
Accountant Member

Sd/-
(D.K. Tyagi)
Judicial Member

N.K. Chaudhary, Sr. P.S.

Copy of the Order forwarded to:

1. The applicant
2. The Respondent
3. The CIT Concerned
4. The Ld. CIT (Appeals)
5. The DR, Ahmedabad
6. The Guard File

By order

AR,ITAT,Ahmedabad