Minimization of tax-incidence, by payment of conveyance allowance, as also transport allowance, to an employee

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It is well-known that an employer has to provide maximum benefits and facilities to its employees in order to attract as also retain experienced employees for the purpose of better and efficient running of its business operations. For the purpose of job requirements, an employee may be required to use a vehicle, mainly a motor-car, in the performance of duties of his office. In most of the cases, the employer reimburses to its employees the expenses incurred on the running and maintenance of car. In such a scenario a perquisite value has to be added to the remuneration of the employee as per section 17(2)(viii) of the Income-Tax Act, 1961 (the Act), r.w.r. 3 of the Income-Tax Rules, 1962 (the Rules). The method of valuation prescribed under rule 3 of the Rules, for the valuation of such perquisite, is quite cumbersome, as also not beneficial as regards the incidence of taxation in the case of the employee.

In my view, a better and simpler way of providing the aforesaid facility to the employee is by way of payment of conveyance allowance or fixed car allowance, as contemplated under section 10(14)(i) of the Act.

It may also be stated here that most of the tax-payers, employers and employees do not understand the distinction between the term '*Conveyance allowance'* and '*Transport allowance'*. In this regard, it must be understood that the scope and purpose of conveyance allowance and transport allowance are totally different. Besides, the conveyance allowance is entitled to exemption under section 10(14)(i), whereas transport allowance is entitled to full exemption under section 10(14)(ii) of the Act. In this context, it must be clearly understood that transport allowance payable to the extent of Rs.1600 per month, to an employee, is not liable to tax, at all, in his hands.

The aforesaid issues may be briefly listed as follows :

(i) Payment of conveyance allowance or fixed car allowance to an employee and exemption in respect of the same under section 10(14)(i) of the Act; and

(ii) Payment of transport allowance and exemption in respect thereof, under section 10(14)(ii) of the Act

Both the aforesaid issues are discussed as follows :

I. Payment of conveyance allowance or fixed car allowance to an employee and exemption in respect of the same, under section 10(14)(i) of the Act

An employee may be paid fixed car allowance or conveyance allowance for the performance of the duties of his office. The quantum of the conveyance allowance may be fixed on the basis of the nature of the duties of the employee. In this connection, it may be stated that neither the employee will accept a conveyance allowance lower than what is reasonable, nor the employer will grant conveyance allowance more than what is reasonable.

In this regard, it may also be clarified that the aforesaid payment is in the nature of a conveyance allowance and not reimbursement of the relevant expenses incurred by the concerned employees, because the amount, in question, is fixed on monthly basis, and the same is used in the performance of the duties of their office.

In this regard, section 10(14) of the Act, is relevant. Besides, rule 2BB(1) of the Income-Tax Rules, 1962 (the Rules), is also relevant. In addition, there are other legal aspects which are also relevant in this context. The same are discussed as follows :

1. Section 10(14) – Exemption in respect of special allowances to employees.

For the sake of ready reference, section 10(14) of the Act, is reproduced as follows :

"Incomes not included in total income

10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –*

(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 ;

(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed :

> **Provided** *that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence ;"*

In the present context, sub-clause (i) of section 10(14) of the Act is relevant. From the aforesaid provisions of section 10(14)(i), it may be seen that in order to qualify for exemption thereunder, the special allowance –

(i) should not be in the nature of a perquisite, within the meaning of section 17(2) of the Act,

(ii) should have been 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,

(iii) would be exempt to the extent such expenses are actually incurred for that purpose.

We shall, hereinafter, examine the various aspects regarding the fulfilment of the aforesaid conditions / requirements.

2. Rule 2BB(1) of the Rules – Prescribed allowances for the purpose of section 10(14)

The allowances referred to in section 10(14) of the Act have been prescribed in rule 2BB of the I.T. Rules, 1962. For our purpose, rule 2BB(1) is relevant and the same is reproduced as follows :

"*Prescribed allowances for the purposes of clause (14) of section 10.*

2BB. *(1) For the purposes of sub-clause (i) of clause (14) of section 10, prescribed allowances, by whatever name called, shall be the following, namely :—*

(a) any allowance granted to meet the cost of travel on tour or on transfer;

(b) any allowance, whether, granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty;

(c) any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit :

Provided *that free conveyance is not provided by the employer;*

(d) any allowance granted to meet the expenditure incurred on a helper where such helper is engaged for the performance of the duties of an office or employment of profit;

(e) any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions;

(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.

Explanation : For the purpose of clause (a), "allowance granted to meet the cost of travel on transfer" includes any sum paid in connection with transfer, packing and transportation of personal effects on such transfer."

From the aforesaid provisions of rule 2BB(1), it may be seen that as per clause (c) thereof, any allowance granted to meet the expenditure incurred on conveyance in the performance of duties of an office or employment of profit, shall be exempt under section 10(14)(i) of the Act, if the other relevant conditions are fulfilled. It is, thus, clear that the aforesaid conveyance allowance is one of the allowances prescribed under rule 2BB(1) of the Rules.

In the aforesaid rule 2BB(1)(c), there is a **proviso** which lays down that free conveyance should not have been provided to the employees by the employer, in order to qualify for the aforesaid exemption.

Thus, a conveyance allowance granted to meet the expenditure incurred on conveyance in the performance of duties of the office, is one of the allowances prescribed under rule 2BB(1) for the purpose of section 10(14)(i) of the Act. Therefore, one of the three requirements laid down under section 10(14)(i), stands fulfilled in the present case.

3. The aforesaid allowance is not a perquisite within the meaning of section 17(2) of the Act.

We have now to examine whether the aforesaid allowance could be considered as a perquisite, within the meaning of section 17(2) of the Act. The grant or allowance of perquisites has become a regular feature of almost all employments, specially in view of the constant rise in the price index and also on account of tax benefit, it offers to the employee, without prejudice to the interests of the employer. The basic idea underlying the concept of perquisite is that the

benefit or advantage that the employee receives is personal and is not related to any benefit that the employer may receive from the services of the employee. '*Perquisite*', thus, is a personal advantage, which will not apply to the mere reimbursement of necessary disbursement – *Owen Vs. Pook (Inspector of Taxes) [1969] 74 ITR 147 (HL).* [HL stands for House of Lords]

In the present case, the conveyance allowance is being granted for the discharge or performance of duties of an office or employment for profit and therefore, it will not involve any personal advantage to the employee, so as to fall within the meaning of perquisite under section 17(2) of the Act.

Therefore, the aforesaid conveyance allowance will not partake the character of perquisite in the hands of the employees, within the meaning of section 17(2) of the Act.

In support of the aforesaid stand, reliance may be placed on the following judgements :

(i) *C.I.T. Vs. L.A. Rosemann [2000] 245 ITR 716 (Bom.)*

It was held in this case that in view of section 10(14) of the I.T. Act, 1961, any special allowance granted to meet expenses incurred for the purposes of the duties of an office or employment, is exempt from tax to the extent such expenses were actually incurred for that purpose. It was also held that the word '*perquisite*' would not cover reimbursement of necessary expenses.

(ii) *Rajasthan State Electricity Board Vs. I.T.O. [1994] 48 ITD 100 (Jp.)*

It was held in this case that special allowance or benefit by way of orderly allowance paid to senior officers of the Electricity Board, cannot be treated as perquisite, because the same did not involve a personal advantage to them, so as to fall within the meaning of assessable perquisite.

In view of the aforesaid reasons, the second requirement laid down under section 10(14)(i) also stands fulfilled, in the present case.

4. Evidence in respect of expenses actually incurred.

The last of the requirements for the purposes of exemption under section 10(14)(i) is in respect of the nature, degree or standard of proof of expenses actually incurred in the performance of their duties by the employees concerned.

In this connection, the following two judgements of the Supreme Court are very relevant :

(i) *CIT Vs. ITI Ltd [2009] 18 DTR 162 (SC),* and

(ii) *CIT Vs. Larsen and Toubro Ltd [2009] 18 DTR 163 (SC) : 313 ITR 1 (SC)*

In both the aforesaid judgements, it has been held by the Apex Court that beneficiary of the exemption under section 10(5) or 10(14) of the Act, relating to leave travel concession / assistance or conveyance allowance is the individual employee. There is no requirement of the Central Board of Direct Taxes (CBDT) requiring the employer to collect and examine the supporting evidence, in respect of declaration furnished by the employee, to the effect that he has actually utilized the amounts paid towards leave travel concession / conveyance allowance, for the purpose of TDS under section 192 of the Act. In view of the aforesaid judgements of the Supreme Court, the employer is under no obligation to verify the correctness or otherwise of the certificates / declaration furnished by the employees, to the effect that they have actually utilized the amounts paid to them, towards leave travel concession or conveyance allowance.

It is, thus, clearly established that the employer is under no obligation to verify the correctness of the certificate / declaration furnished by the employee to the effect that he has actually utilized the amount paid to him.

In addition, in this regard, a Circular of the CBDT and some legal precedents are also relevant, which are discussed as follows :

(i) *Circular No.33(LXXVI-5), dated 1.8.1955.*

The aforesaid Circular, though issued under the parallel provisions, viz. section 4(3)(vi) of the erstwhile I.T. Act, 1922, the same is also applicable under the 1961 Act. For the sake of ready reference, the aforesaid Circular is reproduced as follows :

"***Special allowance or benefit being reasonable and not disproportionately high - No details of expenses actually incurred need be asked for the purpose of granting exemption under section 4(3)(vi) of 1922 Act –***

The exemption under section 4(3)(vi) in respect of any special allowance or benefit will be available from the assessment year 1955-56 only to the extent of the sanctioned amounts. Generally speaking, where the specific allowances are reasonable with reference to the nature of the duties performed by the assessee and are not

disproportionately high compared to the salary received by him, no attempt will ordinarily be made to call for details of expenses actually incurred by him with a view to disentitling him to some extent from the exemption. An enquiry will, of course, be justified and will be made in cases where the allowances are prima facie unreasonably high."

From the aforesaid Circular, it is quite clear that it is not open to the Revenue to call for the details of the expenses actually incurred, unless the specific allowance is disproportionately high compared to the salary received by the employee or unreasonable with reference to the nature of duties performed by him.

(ii) *Rajasthan State Electricity Board Vs. I.T.O. [1994] 48 ITD 100 (Jp.)*

In this case, the Hon. Tribunal was seized of the issue of exemption under section 10(14) of the Act, in respect of special allowance in the form of orderly allowance paid to senior officers of the Rajasthan Electricity Board. In this case, the Hon. Tribunal has made a reference to *Circular No.568, dated 27.7.1990 – 184 ITR (St.) 166*, issued by the CBDT. In this regard, the Hon. Bench of the Tribunal has made significant observations in paragraph (20) of the aforesaid judgement. The same is reproduced as follows :

"20. *On going through CBDT Circular No.568 dt. 27th July, 1990, we are satisfied that whereas the CBDT had required of the disbursing authorities to satisfy themselves by insisting on production of evidence of making actual payment / expenditure, in respect of exemption which is claimed under ss. 10(13A), 80CCA, 80CCB, 80DD, 80GG and 80RR of the Act, no such insistence was stressed by the CBDT in respect to a claim for exemption under s.10(14)(i) of the Act. The Principal Officer of the Board could not have, therefore, legally and as a matter of right, insisted on production of detailed account of the expenditure incurred by the officers on engaging a helper at their residences to assist them in the discharge of the duties of their respective offices there. In our opinion, therefore, disbursing authorities of the Board, responsible for paying incomes chargeable under the head 'salaries' had discharged their responsibility under s. 192(1) in accordance with the legislative intention behind s. 10(14)(i) and CBDT's guidelines issued in respect thereto. The orderly allowance paid to the officers, being not in the nature of assessable perquisite, the said authorities were justified in not having deducted any tax in respect thereto while disbursing salaries to such officers. The directions issued by the ITO (TDS) for deposit of amount of TDS at Rs.37,36,775 with interest*

thereon at Rs.1,48,465 thus totaling to Rs.38,85,240 (at the time of making the order by him) as approved of by the CIT(A) are inherently bad in law and the same are hereby cancelled."

From the aforesaid observations of the Tribunal, it may be seen that as per Circular No.568, dated 27.7.1990, whereas the CBDT had required the disbursing authorities to satisfy themselves by insisting on production of evidence of making actual payment / expenditure, in respect of exemption claimed under sections 10(13A), 80CCA, 80CCB, 80DD, 80GG and 80RR of the Act, no such insistence was stressed by the CBDT in respect of the claim for exemption under section 10(14)(i) of the Act.

In view of the aforesaid reasons, a **certificate by the employee** that he has actually spent the conveyance allowance for the purposes of the duties of his office, should be treated as sufficient evidence for the purposes of exemption under section 10(14)(i) of the Act.

(iii) *Madanlal Mohanlal Narang Vs. A.C.I.T. [2006] 101 TTJ 1005 (Mum.).*

In this case, the Hon. Tribunal was, *inter alia*, seized of the issue regarding exemption under section 10(14), in respect of special allowance or benefit granted to the employees by the employer. The Hon. Tribunal has placed reliance on Circular No.33(LXXVI-5), dated 1.8.1955 of the CBDT and accordingly, it is held that it is not open to the Revenue to call for the details of the expenses actually incurred, unless the specific allowance is disproportionately high compared to the salary received by the employee or unreasonable with reference to the nature of duties performed by him. For the sake of ready reference, the relevant part of the Head-Note on page 1006 of the Report, is reproduced as follows :

"Held : *The circular No.33(LXXVI-5) dt. 1st Aug., 1955, was undoubtedly issued under the IT Act, 1922 but then all the circulars issued under the 1922 Act do not cease to hold good in law. Sec. 297(2)(k) specifically provides that notwithstanding the repeal of IT Act, 1922, amongst other things, any instructions issued under any provisions of the repealed Act shall, so far as not inconsistent with the corresponding provisions of IT Act, 1961, be deemed to have been issued under the corresponding provisions of the new Act, and shall continue to remain in force accordingly. In other words, to the extent the legal provisions of 1922 Act and 1961 Act are in pari materia, circulars and instructions issued under the 1922 Act will also hold good. The expression used, i.e., 'to the extent to which such expenses are actually incurred' being absolutely identical in both the Acts, the provisions of the above circular apply under the 1961*

Act as well. ***In the light of the aforesaid circular, it is not open to the Revenue to call for the details of expenses actually incurred unless the specific allowance is disproportionately high compared to the salary received by him or unreasonable with reference to the nature of the duties performed by the assessee.*** *It is, however, not the case of the Revenue that the allowance granted to the assessee was unreasonable or excessive having regard to the salary of the assessee or the legitimate minimum requirement for the purpose for which the allowances were granted. The quantum of these allowances is prima facie reasonable vis-à-vis salary of the assessee and the purposes for which the allowances were given. Uniform washing and making allowances of Rs.51,554 per year, which is required to be spent when half a time the assessee is on ships abroad, cannot be said to be excessive. Similarly, academic research allowance of Rs.13,560 to an electrical officer who is a qualified engineer and is required to keep abreast of the technical knowledge cannot either be said to be excessive or unreasonable. In the light of the aforesaid circular it is not open to the Revenue to call for the details of expenses actually incurred unless the specific allowance is disproportionately high compared to the salary received by him or unreasonable with reference to the nature of the duties performed by the assessee. None of the conditions is satisfied in the present case. It is not the case of the Revenue that there is any material to indicate or establish that the assessee has any unspent portion out of the allowances so paid to the assessee. The disallowance sustained by the CIT(A), therefore, cannot be approved."* [Emphasis added]

(iv) *C.I.T. Vs. Semi-Conductor Complex Ltd. [2007] 208 CTR 462 (P&H): 292 ITR 636 (P&H)*

In this case, the Hon. High Court was seized of the issue of exemption in respect of Leave Travel Concession (LTC) under section 10(5) of the Act.

In this case, the assessee company did not deduct tax at source from the amounts reimbursed to its employees, towards LTC. The Tribunal recorded a categorical finding that the declarations filed by the employees of the assessee company in the prescribed proforma gave full details of the journey undertaken by the employees and that the assessee had reimbursed its employees for LTC, after obtaining all the information in the prescribed proforma and held that the amounts paid towards LTC were entitled to exemption. It was also observed by the Hon. Tribunal that the AO had also not pointed out any specific instance where expenses had been reimbursed to an employee, on the basis of fraudulent or wrong certificate given by him.

On appeal, it was held by the Hon. High Court that the aforesaid judgement of the Tribunal was quite correct in the facts and circumstances of the case.

From the aforesaid Circular of the CBDT and the legal precedents, it may be safely concluded that –

(a) As per the aforesaid Circular of the CBDT, dated 1.8.1955, where the specific allowances are reasonable with reference to the nature of the duties of the employee and as compared to the salary received by him, the details in respect of the expenses actually incurred, need not be called for, by the I.T. authorities.

(b) As per the judgement of the Mumbai Bench of the Tribunal, in the case of *Madanlal Mohanlal Narang (Supra),* it is not open to the Revenue to call for the details of expenses actually incurred, provided the specific allowance is reasonable as compared to the salary and with reference to the nature of duties of the employee.

(c) As per Jaipur Bench of the Tribunal, in the aforesaid case of *Rajasthan Electricity Board*, as per Circular No.568 of the CBDT, dated 27.7.1990, the production of details in respect of expenses incurred out of the specific allowance cannot be insisted upon and a certificate submitted by the employee regarding expenditure actually incurred, should be treated as sufficient evidence in respect thereof.

(d) As per the judgement of Punjab and Haryana High Court, in the aforesaid case of *Semi-Conductor Complex Ltd. (Supra),* the declaration filed by the employee regarding the actual expenditure incurred, should be treated as sufficient evidence in respect thereof.

In this regard, there is another very significant and noteworthy point that an employer will normally not grant an allowance more than what is necessary for the purpose of duties of the employee and an employee will not accept an allowance which is not sufficient for the performance of the duties of his office. Therefore, ordinarily the amount of specific allowance granted by the employer to the employee for the purpose of his duties, should be accepted without calling for any additional evidence regarding the reasonableness thereof.

In the light of the aforesaid discussion, a certificate or declaration submitted by an employee, to the effect that he has actually spent the specific allowance, viz. conveyance allowance in the present case, in the performance of his duties, should be sufficient evidence in respect thereof.

However, as a practical guideline, it is advisable that the employer checks the reasonableness of the allowance on the basis of the evidence produced by the employees, at least for one month of the year, on a sample basis. This is just for the purpose of the satisfaction of the employer and not for the purpose of claim of exemption of the specific allowance under the Income-Tax Act, 1961.

From the aforesaid discussion in the preceding paragraphs, it is clearly established that payment of conveyance allowance or fixed car allowance to the employees for the performance of the duties of their office is the best option. The reasons for the same are as follows :

(a) Reasonably good amount of conveyance allowance or fixed car allowance may be paid to an employee based on the nature of his duties and salary structure.

(b) There are no hassles of calculation of perquisite value in the hands of the employee, because the only requirement is that the employee has to give a certificate that he has actually spent the amount paid towards conveyance allowance.

(c) There is no perquisite added in the hands of the employee in such a scenario

II. Payment of transport allowance and exemption in respect thereof, under section 10(14)(ii) of the Act

In this connection, at the outset, it must be stated that most of the income-tax assessees do not understand the tax-treatment of transport allowance in the correct perspective. Transport allowance is to be found as Item No.10 of the Table provided under rule 2BB(2) of the Income-Tax Rules, 1962.

As per the aforesaid Item No.10 of the Table under rule 2BB(2), r.w.s.10(14)(ii) of the Act, transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and place of his duty is exempt from tax to the extent of Rs.1600 per month.

Further, there is often lot of confusion in the minds of the income-tax assesses, relating to transport allowance and conveyance allowance. In order to bring out the correct legal position in respect of conveyance allowance and transport allowance, the provisions of section 10(14) of the

Act, as well as rule 2BB of the Rules are relevant. Besides, the provisions of section 17(2)(iii) are also relevant in the present context. The same are discussed as follows :

1. Provisions of section 10(14) of the I.T.Act, 1961.

In the present context, the provisions of section 10(14) of the Act are relevant. For the sake of ready reference, section 10(14) of the Act is reproduced as follows :

> ***"10. Incomes not included in total income.***
>
> *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*
>
> *(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 ;*
>
> *(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed*
>
> ***Provided** that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence."*

From the aforesaid provisions of section 10(14) of the Act, it may be seen that in sub-clause (i) of section 10(14), any prescribed special allowance or benefit, other than those in the nature of a perquisite, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit is exempt to the extent to which such expenses are actually incurred for that purpose. The allowances prescribed for this purpose are spelt out in rule 2BB(1) of the Rules. Clause (c) of rule 2BB(1) refers to any allowance granted to meet the expenditure incurred on conveyance in the performance of the duties of an office or employment of profit.

Besides, under sub-clause (ii) of section 10(14), any prescribed allowance granted to the assessee, either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living, is exempt upto the prescribed extent. Rule 2BB(2) enumerates the allowances and the limits upto which they are exempt.

From the aforesaid provisions of section 10(14) of the Act, it may be seen that any conveyance allowance in the form of car allowance, etc, is covered under sub-clause (i), whereas the transport allowance is covered under sub-clause (ii) of section 10(14) of the Act.

In view of the aforesaid reasons, the taxation of perquisite in lieu of payment of any car allowance falling under sub-clause (i) of section 10(14) of the Act, will have no impact on the tax-treatment of transport allowance, as contemplated under sub-clause (ii) of section 10(14) of the Act.

2. Provisions of rule 2BB of the I.T. Rules, 1962.

The allowances for the purposes of clause (14) of section 10 are prescribed under rule 2BB of the Rules.

As already pointed out, rule 2BB(1) deals with the allowances prescribed for the purposes of sub-clause (i) of clause (14) of section 10 of the Act.

On the other hand, rule 2BB(2) deals with the allowances prescribed for the purposes of sub-clause (ii) of clause (14) of section 10 of the Act.

In the present context, clause (c) of rule 2BB(1) is relevant, which is reproduced as follows :

> ***"2BB.*** *(1) For the purposes of sub-clause (i) of clause (14) of section 10, prescribed allowances, by whatever name called, shall be the following, namely :—*
>
> *(c) any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit :*
>
> ***Provided*** *that free conveyance is not provided by the employer;"*

It is, thus, quite clear that any allowance, including a car allowance falling under clause (i) of section 10(14) of the Act, is covered under the aforesaid clause (c) of rule 2BB(1) of the Rules.

Besides, Item No.10 of the Table provided under rule 2BB(2) is also relevant in the present context. For the sake of ready reference, the same is reproduced as follows :

"2BB. *(2) For the purposes of sub-clause (ii) of clause (14) of section 10, the prescribed allowances, by whatever name called, and the extent thereof shall be the following, namely :—*

10. Transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty."

From the aforesaid discussion, it is clearly established that the car allowance payable to the employee by the employer has absolutely no connection with the transport allowance, as contemplated under the aforesaid Item No.10 of the Table provided under rule 2BB(2) of the Rules. Therefore, the provision of car allowance to the employees by the employer will not, in any manner, impact the exemption of transport allowance, as provided under the aforesaid Item No.10 of rule 2BB(2), r.w.s.10(14)(ii).

3. *Explanation* to section 17(2)(iii) of the Act

In the present context, *Explanation* to clause (iii) of sub-section (2) of section 17 of the Act is also relevant. It may be stated here that section 17 provides inclusive definitions of "*salary*", "*perquisite*" and "*profits in lieu of salary*". For the sake of ready reference, section 17(2)(iii) of the Act, is reproduced as follows "

"17. "Salary", "perquisite" and "profits in lieu of salary" defined.

For the purposes of sections 15 and 16 and of this section,—

(2) "perquisite" includes –

(iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(a) by a company to an employee who is a director thereof;

(b) by a company to an employee being a person who has a substantial interest in the company;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply and whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds fifty thousand rupees:

Explanation.—For the removal of doubts, it is hereby declared that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause;"

From the aforesaid *Explanation* to section 17(2)(iii), it is clear that the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place of his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate for the purposes of this sub-clause.

It is, thus, clearly established that any facility provided by the employer to the employee, for commutation by the employee between his residence and office, will not be treated as a perquisite liable to tax in his hands.

4. Conclusion

In the light of the discussion in the preceding paragraphs (1) and (2), it is clearly established that car allowance / conveyance allowance and transport allowance fall under sub-clauses (i) and (ii) of section 10(14) of the Act, respectively.

Besides, the aforesaid car allowance / conveyance allowance and transport allowance also fall under sub-rules (1) and (2) of rule 2BB of the Rules, respectively.

In addition, as per the provisions of *Explanation* to section 17(2)(iii) of the Act, any facility provided by the employer to the employee for commutation by the employee between his residence and office, will not be treated as a perquisite, liable to tax in his hands.

In the light of the aforesaid reasons, an employer can provide transport allowance which is exempt [As per Item No.10 of the Table provided under rule 2BB(2)] to the employees, who are also provided car allowance or conveyance allowance by such employer

In view of the aforesaid reasons, an employee who opts for car allowance / conveyance allowance, for the performance of the duties of his office will be entitled to exemption in respect of transport allowance to the extent of Rs.1600, per month.

III. Final conclusion

From the discussion in the preceding paragraphs (I) and (II), it is clearly established that payment of conveyance allowance / car allowance to an employee for the performance of the duties of his office as contemplated under section 10(14)(i), r.w.r. 2BB(1)(c) of the Rules, will be exempt from tax in the hands of the employee. Besides, no documents or log book, etc. will be required to be maintained, as required under rule 3 of the Rules, in such cases. Therefore, payment of conveyance allowance / car allowance to an employee for the performance of the duties of his office, will be an easier and simpler way for provision of such benefit / facility.

Besides, in addition to the aforesaid benefit, the employee may also be paid transport allowance to the extent of Rs.1600 per month, which will be exempt under section 10(14)(ii), r.w.r. 2BB(2) of the Rules.

In the light of the aforesaid reasons, I would advise the employers as well as the employees to opt for the aforesaid method for providing or meeting the expenditure incurred by an employee in the performance of the duties of his office.

As regards the payment of transport allowance at the rate of Rs.1600 per month to an employee, the same may be paid without any impact on the exemption of the aforesaid conveyance allowance or car allowance.

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