

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.1141/Bang/2017
Assessment year : 2012-13

State Bank of India, J. P. Nagar Branch, 1104, 24 th Main Road, 1 st Phase, J. P. Nagar, Bengaluru – 560 078. PAN : AAACS 8577 K	Vs.	The Assistant Commissioner of Income Tax, Circle 18(2), TDS – Circle – 3(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Muralidhar, Advocate
Revenue by	:	Shri. B. R. Ramesh, JCIT

Date of hearing	:	26.06.2018
Date of Pronouncement	:	13.07.2018

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(A), *inter alia*, on following grounds:

- 1. The order of the learned CIT (Appeals), on aspects agitated in this appeal, is bad in law, contrary to the provisions of law and facts of the case and without appreciation of the facts and circumstances of the case in their right perspective.*
- 2. The learned CIT (Appeals) erred in passing an order under section 201(1) and 201(1A) raising demand of Rs.46,670/- on the basis that*

tax was not deducted at source on payment of Leave Travel Concession.

- 3. The learned CIT (Appeals) erred in not appreciating that the benefit of Leave Travel Concession is available to the Bank's employee even in cases where the journey undertaken by an employee involves a foreign leg but the employee's designated place is in India and he actually visits the place as designated.*
- 4. The learned CIT (Appeals) erred in making the following observation, holding as under:*

"I am in agreement with the A.O. that as per the provisions of Section 10(5) of the Act, only the reimbursement of expenses, which are incurred on travel of employees and his family to any place in India subject to certain conditions, are exempt. Since the employee of the assessee has travelled to foreign countries, the benefit of exemption available under section 10(5) of the Act cannot be granted. At the time of advancement of LTC amount, the employer may not have been aware of it, but at the time of settlement of bills of LTC/LFC, complete details are obtained by the employer and are available to it. Once it is noticed that the employee has visited foreign countries and he is not entitled for exemption for reimbursement of LTC under section 10(5) of the Act, the employer ought to have deducted Tax at Source treating the amount as not exempt and as being part of the employee's total salary. Since the assessee has intentionally not deducted Tax at Source on a payment, to which the employee is not entitled for any exemption, the Assessing Officer has rightly held the assessee to be in default and raised the demand under section 201(1) and 201(1A) of the Act."

The above observations are without any basis and are contrary to the facts of the case. The appellant objects to these observations/ conclusions.

- 5. The CIT (Appeals) has observed in Para 8.1 of his order as follows:*

"Thus, in the case of Gwalior Rayon, the bonafide of the employer was not in doubt whereas in the instant case, as reproduced in Para 6.7 above, the AO has specifically brought out how the appellant was seized of the matter that employees are purposely taking circuitous route. The appellant has also not brought on record any evidence whatsoever to show that in considering the amount exempt u/s 10(5) of the I.T Act, it acted in a

bonafide manned or that there was any basis of arriving at this conclusion (of amount being exempt)".

The learned CIT (Appeals) has erred in commenting that the Appellant has not proved its bonafide by providing any material. Whereas Appellant had produced before the Assessing Officer rules and guidelines for LFC issued by the All India Banks Association and Appellant understanding was that all important matters relating to banks have been circulated by the association and the Appellant had no reasons to believe that such circulars were not in accordance with the provisions of Income Tax Act and more particularly in the light of past practice being followed by the bank for several years and it was accepted by the Department in computing its liability towards TDS in relation to payment of LFC and exemption u/s 10(5).

6. *Without prejudice to the above, the learned CIT (Appeals) erred in not appreciating that the employee is entitled to exemption under section 10(5) to the extent of expenses incurred for travel in India where the employee's designated place is in India and he actually visits the place as designated even in cases where the journey undertaken by an employee involves a foreign leg.*

The learned CIT (Appeals) has not appreciated the fact that this practice has been followed for the last several years by the Appellant. The learned CIT (Appeals) has stated that principle of res judicata is not applicable to Income Tax proceedings. The CIT (Appeals) has relied on the following decisions:

- (i) *Installments Supply Private Limited Vs. Union of India, 1962 SC 53*
- (ii) *Radha Swamy Satsang Vyas Vs. CIT, 1992 AIR 377*
- (iii) *Distributors (Baroda) Private Limited Vs. Union of India, 1986 1 SCC 43*

Whereas the facts of these cases are different from that of the Appellant. Hence the cases referred are not applicable.

8. *Without prejudice to the above, the learned CIT (Appeals) erred in computing interest without furnishing the detailed working of the interest.*
9. *The learned CIT (Appeals) erred in not appreciating the submissions made by the Bank in the correct perspective.*
10. *On similar facts the learned CIT (Appeals) Nagpur has held that the travel allowance paid for the journey in India is well within the limits of the provisions u/s 10(5) read with Rule 2B.*

11. *With these and such other grounds that may be urged at the time of hearing the Appellant prays for the relief sought for.*

2. During the course of hearing, the learned Counsel for the assessee has invited our attention that the issue involved in this appeal is squarely covered by the order of the Tribunal in the assessee's own case in ITA No.1395/Bang/2017 for the assessment year 2011-12 against the assessee. Copy of the order of the Tribunal is placed on record. Delay of 5 days in filing of appeal is duly explained. We accordingly condone the delay and admit the appeal for hearing.

The learned DR did not dispute these facts.

3. Having carefully examined the material available on record, we find that identical issue was examined by the Tribunal in the assessee's own case for the assessment year 2011-12 and decided it against the assessee. For the sake of reference, we extract the finding of the Tribunal as under:

"We heard rival submissions and perused material on record. The issue in the appeal is covered against the assessee-bank by the decision of the co-ordinate bench (Bangalore) of the Tribunal in the case of Syndicate Bank vs. Asst.CIT(TDS), (2017) 80 taxmann.com 179(Bang.Trib), wherein, following the decision of the co-ordinate bench (Lucknow) of Tribunal in the case of SBI vs. Dy.CIT(TDS) (2016) 158 ITD 194 (Luck-Trib), [to which one of us viz., the Hon'ble Judicial Member is the author] held as follows:

"7.1 The solitary issue for consideration now is: Whether the A.O. was justified in treating the assessee-Bank as an 'assessee in default' u/s. 201(1) of the Act for making short deduction u/s. 192 of the Act in allowing exemption u/s. 10(5) of the Act towards the reimbursement of LTC/LFC claims of its employees?

7.2 Briefly stated, a survey u/s. 133A of the Act had taken place in the business premises of the assessee-Bank on 18.3.2014 by the ACIT, TDS Circle 18(2), Bengaluru –the A.O. – and it was noticed during the course of survey that the assessee-Bank (the deductor) had allowed exemption u/s. 10(5) of the Act to its employees for travel outside India and also travelled by a circuitous route which was not in accordance with the provisions of s.10(5) of the Act r.w. Rule 2B. Accordingly, the A.O. treated the assessee-Bank as an 'assessee in default' u/s. 201(1) of the Act for the elaborate reasons set out in impugned assessment orders for the assessment years under dispute. The A.O.'s stand was

:(i) that there was no requirement under the law or the rules that the journey should be performed through shortest route:

Conditions for the purpose of section 10(5)

(i) where the journey is performed on or after the 1st day of October, 1997, by air, an amount not exceeding the air economy fare of the national carrier by the shortest route to the place of destination;

- There must be a reimbursement of
- Actual expenditure incurred on
- Travelled within India by taking a
- Shortest route

The assessee Bank itself vide its letter dt: 26/3/2014 had stated as under:

(ii) In our case, we have reimbursed the LFC only in respect of journey the destination of which is in India. Further, the quantum was restricted to the air fare by economy class through the shortest route....."

[Courtesy: P 6 of A.O.'s order]

7.3 The above narrations are highlighting the contradictions of the assessee's defense. The assessee-Bank had in its grounds of appeal contended that "4.5.....that the appellant bank was under the bona fide belief that the amount was exempt u/s. 10(5) and as such, the appellant bank cannot be treated as 'an assessee in default' u/s. 201 of the Income-tax Act, 1961". On the contrary, on examination of the case on hand, it is explicit that the assessee bank had not applied its mind while applying the provisions of s.10(5) of the Act with letter and spirit and allowed exemption in a mechanical way. As rightly highlighted by the learned DR in his submissions, the provisions of s. 10(5) of the Act are clear and only the reimbursement of expenses which were incurred on travel of employees and his family to any place in India subject to certain conditions are exempt. Since the employees of the assessee-Bank had travelled to foreign countries, the benefit of exemption available u/s. 10(5) of the Act should not have been granted. We agree that the assessee-Bank may not have been aware of the details of the employees' places or destination of visits at the time of advancement of LTC/LFC amounts. However, at the final settlement of the claims of the employees under LTC/LFC, the assessee-Bank should have obtained all the relevant details such as the places of visits (destinations) etc. When the assessee-Bank was aware of the fact that its employees had visited foreign countries by availing LTC/LFC concession and so he was not entitled for exemption of reimbursement of LTC u/s. 10(5) of the Act, the assessee-Bank was under obligation to deduct tax at source treating such an amount as not exempt. Since the assessee-Bank had failed to enforce its duty to deduct tax at source as envisaged in section 192 of the Act, it is tantamount that the assessee-Bank was an 'assessee in default' u/s. 201(1) of the Act and the A.O.(TDS) was within her domain to hold so. Moreover, the assessee-Bank does not have a case that its employees have included the LTC/LFC in their taxable salary and paid tax on the same. Moreover, the national carrier, i.e., Air India/Indian Airlines had also been offering LTC package to various destinations in India and allowing passengers to visit the foreign countries at the full fare chargeable to the final destination in India and it was clearly mentioned in Air India website that the value of LTC was chargeable to Income Tax.

7.4 The Hon'ble ITAT, Lucknow Bench 'A' in the case of SBI case (*supra*) on identical facts had decided the issue in favour of Revenue. For appreciation of facts, the relevant portion of the findings of the Hon'ble Bench is as follows:

"9. On perusal of this section, we are of the view that this provision was introduced in order to motivate the employees and also to encourage tourism in India and, therefore, the reimbursement of LTC/LFC was exempted, but, there was no intention of the Legislature to allow the employees to travel abroad under the garb of benefit of LTC available by virtue of section 10(5) of the Act. Undisputedly, in

the instant case, the employees of the assessee have travelled outside India in different foreign countries and raised claim of their expenditure incurred therein. No doubt, the assessee may not be aware with the ultimate plan of travel of its employees, but at the time of settlement of the LTC/LFC bills, complete facts are available before the assessee as to where the employees have travelled, for which, he has raised the claim; meaning thereby the assessee was aware of the fact that its employees have travelled in foreign countries, for which, he is not entitled for exemption u/s. 10(5) of the Act. Thus, the payment made to its employees is chargeable to tax and in that situation, the assessee is under obligation to deduct TDS on such payment, but the assessee did not do so for the reasons best known to it."

7.5 On identical facts, the Hon'ble ITAT, Chandigarh 'A' Bench in the case of *Om Parkash Gupta (supra)*, had recorded its findings as under:

"12. The said sub-section provides that where an individual had received travel concession or assistance from his employer for proceeding on leave to any place in India, both for himself and his family, then such concession received by the employee is not taxable in the hands of the employee. Similar exemption is allowed to an employee proceeding to any place in India after retirement of service or after the termination of his service. The provisions of the Act are in relation to the travel concession/assistance given for proceeding on leave to any place in India and the said concession is thus exempt only where the employee has utilized the travel concession for travel within India. Further, under Rule 2B of the Income-tax Rules the conditions for allowing exemption u/s. 10(5) of the Act are laid down. The conditions are in respect of various modes of transport. However, the basic condition is that the employee is to utilize the travel concession in connection with his proceeding to leave to any place within India, either during the course of employment or even after retirement of service or after termination of service. Reading of section 10(5) of the Act and Rule 2B of the rules in conjunction lays down the guidelines for claiming exemption in relation to the travel concession received by an employee from his employer or former employer, for proceeding on leave to any place in India and thereafter return to the place of employer and is entitled to reimbursement of expenditure on such travel between the place of employment and destination in India. Rule 2B of the Rules further lays down the conditions that the amount to be allowed as concession is not to exceed the air economy fare of the National Carrier by the shortest route to the destination in India. The said condition in no way provides that the assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of the journey being within India. We find no merit in the claim of the assessee in the present case and we are in conformity with the observation of the CIT(Appeals) in this regard..... In view thereof, we reject the claim of the assessee of exemption u/s. 10(5) of the Act....."

7.6 In the case of *HCL Info systems Ltd. (supra)* – relied on by the assessee-Bank - the issue was that the A.O. had rejected the claim of the assessee (*HCL*) of treating LTC allowance as exempt u/s. 10(5) for the reason of not verifying the evidence with regard to incurring of actual expenditure. However, the Tribunal had accepted the argument of the assessee that the CBDT Circulars did not specifically require verification of the evidence and, thus, held that there was sufficient material on record – by way of declarations furnished by the employees concerned – for the assessee to form a bona-fide belief that LTA granted to its employees was exempt u/s. 10(5) of the Act. On an appeal, the Hon'ble Delhi High Court concurred the findings of the Tribunal by holding that 'the bona fides of the assessee was accepted by the first appellate authority and were duly confirmed by the Appellate Tribunal.'

7.7 On a careful perusal of the ruling of the Hon'ble Court (*supra*), we are of the view that the said ruling of the Hon'ble Court is distinguishable so far as the issue under dispute is concerned. The present assessee-Bank had not brought any credible material on record to remotely suggest that that the basis [by way of declarations furnished by the employees concerned] for formation of such a bona fide belief and honest opinion on exemption u/s. 10(5) of the Act of such an allowance on a circuitous route when it was evident that the employees had undertaken foreign travel.

7.8 In the case of *Nestle India Ltd. (supra)* – relied on by the assessee- Bank – the issue, in brief, was that on a perusal of the annual return of the assessee, the ACIT(TDS) noticed that the assessee had made short deduction of TDS while computing the income of its employees chargeable under the head 'salaries', the conveyance allowance (CA)/reimbursement granted to them had not been included in their taxable salaries. In compliance to the A.O.'s query, the assessee, inter alia, explained that the CA was being paid as reimbursement to those employees who had not been provided with vehicles against declaration that they had actually incurred the said amount for the purpose of conveyance etc., and, therefore, such expense was exempt u/s. 10(14) of the Act. The A.O.(TDS) took a divergent view that the assessee was paying salaries to its employees under the garb of CA in order to avoid taxation and, accordingly, held the assessee as an 'assessee in default'. When the issue went in appeal before the Tribunal which held that the assessee was under a bona fide belief that CA was not taxable and, hence, neither order u/s. 201 nor interest u/s. 201(1A) was leviable. The stand of the Tribunal was concurred by the Hon'ble High Court. However, in the present case, the assessee-Bank had failed to cite the pronouncement of any order of the judiciary to demonstrate why and how it formed the belief that such concession on a circuitous route was exempt u/s. 10(5) of the Act. Thus, we are of the view that this case law relied on by the assessee-Bank cannot be of any help to it.

7.9 In the case of ITC Ltd. (supra) – relied on by the assessee-Bank – the issue involved was non-deduction of tax at source from the conveyance allowance (CA) paid to its employees. The Hon'ble Tribunal allowed the assessee's case after accepting the explanation of the assessee to be bona fide, i.e., the assessee had amply demonstrated that belief was based on a meeting with the representatives of the assessee-company, declarations obtained from the employees etc. It was only on the strength of such demonstration that the explanation being honest, fair and having a bona fide belief, the Tribunal accepted the assessee's contention which has been sustained by the Hon'ble High Court. However, in the present case, the assessee-Bank had not made any honest effort to justify how its bona fide belief was formed to exclude such allowance from salary of the employee was exempt u/s. 10(5) of the Act. This case law relied by the assessee-Bank is distinguishable.

7.10 We have with due respects perused the ruling of the Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. (supra) – relied on by the assessee-Bank – wherein the issue before the Hon'ble Court was that 'the employer is not under any statutory obligation under the Income-tax Act, 1961 or the rules to collect evidence to show that the employee had actually utilized the amount paid towards LTC or conveyance allowance u/s. 10(5).' However, the present issue is: Whether the deductor (assessee-Bank) was right in allowing exemption u/s. 10(5) to its employees for travel outside India and travel by a long circuitous route which was, according to the A.O., not in accordance with the provisions of s.10(5) read with Rule 2B? Thus, the issue before the Hon'ble Court (supra) was on a different footing and has no relevance whatsoever to the matter under consideration. The ruling of the Hon'ble Supreme Court relied on by the assessee-Bank, in our considered view, cannot come to its rescue.

8. As rightly highlighted by the Hon'ble Tribunal, Lucknow Bench (supra) and careful perusal of the provisions of s.10(5) of the Act, we are of the view that the said provision was introduced in order to motivate the employees and also to **encourage tourism** in India and, therefore, the reimbursement of LTC/LFC was exempted, but, there was no intention of the **Legislature** to allow the employees to **travel abroad under the garb of benefit of LTC available by virtue of s.10(5) of the Act**. However, in the present case the employees of the assessee-Bank have travelled outside India and raised claims of their expenditure incurred therein. There is no dispute that the assessee-Bank may not be aware with the plan of travel of its employees initially, however, at the time of settlement of LTC/LFC bills, the employees should have placed comprehensive details before the assessee-Bank as to where they have travelled/visited and raised the claims, that means to say, the assessee-Bank was well aware of the fact that its employees have travelled in foreign countries too by availing LTC/LFC for which they were not entitled for exemption u/s. 10(5) of the Act. Such being the scenario, the assessee-Bank cannot now plead that it was under the bona fide belief that the amounts

claimed were exempt u/s. 10(5) of the Act. Thus, the Assessing Officer(TDS) was within her domain to term/charge that the assessee-Bank was under obligation to deduct TDS on such payments. Since the assessee-Bank had failed to do so, the A.O.(TDS) had rightly treated the assessee an 'assessee in default' u/s. 201(1) of the Act.

9. The assessee had relied on various case laws for the proposition that its estimate is bona fide and it cannot be held to be an 'assessee in default' u/s. 201(1) of the Act. This contention of the assessee is without legal basis, since the assessee had made no effort to prove how its belief was formed that such foreign travel expenses would come within the ambit of sec. 10(5) of the I.T. Act. Taking into account all the facts and circumstances of the issue as deliberated upon in the fore-going paragraphs and also in conformity with the judicial views (supra), we are of the view that the authorities below were justified in their stand which requires no interference of this Bench. It is ordered accordingly."

Respectfully following the ratio of the decision in the case of Syndicate Bank (supra), we dismiss the appeals filed by the assessees."

4. Since Tribunal has taken a particular view in a similar set of facts, we find no justification to take a contrary view. Accordingly, following the order of the Tribunal in the assessee's own case, we decide the issue against the assessee.

5. In the result, appeal of the assessee stands dismissed.

Pronounced in the open court on 13th July, 2018.

Sd/-

(A. K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 13th July, 2018.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. DR (ITAT) |
| 5. Guard file | |

By order

Sr. Private Secretary,
ITAT, Bangalore.