

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.196/CTK/2019

(निर्धारण वर्ष / Assessment Year :2012-2013)

Branch Manager, LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00159 F		

AND

आयकर अपील सं./ITA No.199/CTK/2019

(निर्धारण वर्ष / Assessment Year :2011-2012)

Branch Manager, LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00159 F		

AND

आयकर अपील सं./ITA No.218/CTK/2019

(निर्धारण वर्ष / Assessment Year :2011-2012)

LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00150 D		

AND

आयकर अपील सं./ITA No.219/CTK/2019

(निर्धारण वर्ष / Assessment Year :2012-2013)

LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00150 D		

AND

आयकर अपील सं./ITA No.250/CTK/2019

(निर्धारण वर्ष / Assessment Year :2011-2012)

Shri Prahallad Behera, Branch Manager (Sales), LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00172 E		

AND

आयकर अपील सं./ITA No.251/CTK/2019

(निर्धारण वर्ष / Assessment Year :2012-2013)

Shri Prahallad Behera, Branch Manager (Sales), LIC of India, Rourkela	Vs.	ITO(TDS), Rourkela
PAN No.AAACL 0582 H & TAN No. : BBNL 00172 E		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri Sunakar Mahanty, Adv.
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing	:	22/01/2020
घोषणा की तारीख/ Date of Pronouncement	:	17/02/2020

आदेश / ORDER

Per Bench :

These six appeals have been filed by the assessee against the order of CIT(A), Sambalpur, all dated 15.03.2019 for the assessment years 2011-2012 & 2012-2013.

2. In all the above appeals, the assessee has raised common ground with regard to confirming the addition by the CIT(A) made u/s.201(1) of the Act by the AO for short-deduction of TDS and interest u/s.201(1A) of the Act.

3. Brief facts of the case are that the assessee-bank is a cooperative society which has been created by the Special Act of the Legislature. A TDS verification was conducted on 19th October, 2012 in the impugned cases and the ITO(TDS) found from the pay bills register, form No.16 and other relevant documents relating to salary payments of the employees of the assessee that 'cash medical benefit' was allowed exemption u/s.10 of the Act by the deductor. The ITO(TDS) noted that under the provisions of Income Tax Act, the cash medical benefit which is paid as an allowance is taxable u/s.15 of the Act irrespective of the fact that it is paid in addition to, or in lieu of salary. Accordingly, the

ITO(TDS) calculated the TDS liability for short deduction of tax u/s.201(1) and interest payable u/s.201(1A) of the Act for the respective assessment years under consideration in the respective appeals as under :-

Sl No	ITA No.	AY.	Short deduction of tax u/s.201(1) of the Act	Interest payable u/s.201(1A) of the Act
1.	ITA No.196/CTK/19	2012-2013	Rs.43,777/-	Rs.3,064/-
2.	ITA No.199/CTK/19	2011-2012	Rs.83,162/-	Rs.15,801/-
3.	ITA No.218/CTK/19	2011-2012	Rs.1,72,582/-	Rs.34,597/-
4.	ITA No.219/CTK/19	2012-2013	Rs.33,578/-	Rs.2,686/-
5.	ITA No.250/CTK/19	2011-2012	Rs.1,39,001/-	Rs.26,410/-
6.	ITA No.251/CTK/19	2012-2013	Rs.40,824/-	Rs.2,858/-

4. Feeling aggrieved from the order of AO, the assessee appealed before the CIT(A), however, the CIT(A) dismissed all the appeals of the assessee.

5. Now, aggrieved further from the order of CIT(A), the assessee is in appeals before the Income Tax Appellate Tribunal.

6. Ld. AR submitted that the CIT(A) has wrongly confirmed the order of AO for non-deduction of TDS as per Section 194A of the Act. It was further submitted by the ld. AR that both the authorities below have failed to appreciate that CBDT vide letter Ref.L F.No.200/75/2001-ITAT, dated 20.05.2002 clarified the matter relating to the income tax on lump sum cash medical benefit to officer and employees of LIC of India and has allowed exemption upto Rs.15,000/- as per the proviso (v) of Section 17(2) of the Act in respect of any expenditure incurred by the officer/employee on his medical treatment

or treatment of any member of his family reimbursed by the employer. Therefore, ld. AR vehemently submitted that the lump sum cash medical benefit to officers and employees upto Rs.15000/- is not chargeable to tax in view of the proviso (v) of Section 17(2) of the Act and also the interest cannot be leviable. Therefore, ld AR submitted that the appeals of the assessee deserves to be allowed.

7. On the other hand, ld. DR relied on the orders of authorities below and submitted that the assessee is to be treated as assessee-in-default for non-deduction of TDS as per Section 201(1) of the Act. Therefore, ld. DR submitted that the order of the CIT(A) be upheld.

8. After hearing both the sides and perusing the entire material available on record, we noticed from the orders of authorities below that the ITO(TDS) noted that under the Income Tax Act, the cash medical benefit which is paid as an allowance is taxable u/s.15 of the Act irrespective of the fact that it is paid in addition to or in lieu of salary. The AO was of the view that what is contemplated by proviso (iv) to Sec.17(2) of the Act was any sum paid by the employer in respect of any expenditure "actually incurred" by the employee on his medical treatment or treatment of any member of his family. Since the Assessee was paying medical reimbursement as a component of the monthly payment to the employee and later claiming that it was not perquisite to the extent of Rs.15,000, the same had to be considered as

salary and not exempt perquisite. The reasoning is the same that the payment should not precede the actually incurring of the expenses and it should be only by way of reimbursement. The grievance of the assessee is that there should not be any deduction of TDS on reimbursement of medical allowance and charging of interest thereon. On perusal of the impugned order, the CIT(A) observed that the assessee has paid fixed medical allowance and as per the CBDT letter issued to LIC, the exemption of Rs.15000/- is allowed to reimbursement of actual expenditure. We find that medical allowance is a fixed allowance paid to the employees of a company on a monthly basis irrespective of whether they submit the bills to substantiate the expenditure or not. However, medical reimbursement is a payment made to employees against specific medical bills submitted by them, subject to entitlement. If employees want to claim tax benefit, they should submit bills for the corresponding amount under medical reimbursement. As per the provisions of Income Tax Act, 1961, medical allowance is not categorised as an allowance which bears entire exemption. Therefore, the medical allowance is a fixed pay provided by an employer, and is fully taxable. Employees can claim a tax benefit up to Rs.15,000/- under medical reimbursement on production of bills and supporting document as per Section 17 (2) of the IT Act, 1961.

9. In view of the above factual aspect of the case, we find that the employer has provided fixed medical allowance to his employees. It is clear from the order of the authorities below that the employees have not submitted any bills/vouchers regarding their medical expenses incurred by them. The allowance is exempt to the extent of expenditure incurred by the employees. In the impugned case, there is no any proof of medical expenditure incurred by the employees which is clear from the orders of authorities below. The ld. AR of the assessee also could not substantiate that the employees have spent the allowances received by them for the intended purpose. Therefore, the fixed medical allowance given by the employer is taxable as salary income. The employer has not been deducted TDS on the fixed medical allowance. The CBDT letter relied on by the ld. AR of the assessee has no application on the issue under consideration as the CIT(A) has already dealt the same in the appellate order. The authorities below have decided the issue in detail and accordingly, we uphold the same. Thus, the sole ground raised in all the appeals under consideration is dismissed.

10. In the result, all appeals of the assessee are dismissed.
Order pronounced in the open court on 17/02/2020.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 17/02/2020

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack