

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 198/JP/2018
निर्धारण वर्ष/ Assessment Years : 2014-15

State Bank of India A-5, Nehru Place, Tonk Road, Jaipur 302015	बनाम Vs.	ITO TDS-2 Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: JPRS12666D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 13/06/2018
उदघोषणा की तारीख / Date of Pronouncement : 14/06/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)- 03, Jaipur dated 04.12.2017 for Assessment Year 2013-14 wherein the assessee has challenged the action of Id. CIT(A) in confirming the order passed by the ITO (TDS) u/s 201(1)/ 201(1A) raising demand of Rs. 1,57,586/- on the basis that tax was not deducted at source on payment of leave travel concession. None appeared on behalf of the assessee and hence, it was decided to hear the matter ex-parte qua the assessee based on material available on record.

2. The brief facts of the case are that the ITO(TDS) observed that the appellant had not deducted TDS on the amount of reimbursement of Leave Travel Concession (LTC)/Leave Fare Concession (LFC) given to its employees even in the cases where a foreign destination was included in the itinerary of their journey. Section 10(5) of the Income Tax Act, 1961 clearly stipulates that exemption under section 10(5) of the Act is available only for travel to any place in India and restricted to the amount of expenses actually incurred for the purpose of such travel read with conditions as per rule 2B of the Income Tax Rule, 1962. The Assessing Officer accordingly issued notice under section 201(1)/201(1A) of the Act to the assessee requiring to explain as to why TDS was not deducted on the amount of reimbursement of LFC. Since the said amount cannot be treated as exempt under section 10(5) of the Act, as a foreign destination was included in the journey, the assessee was treated as assessee in default for not deducting TDS on the said amount of LFC reimbursement. Interest under section 201(1A) of the Act was also charged.

3. On appeal, the Id CIT(A) confirmed the order of the AO and the relevant finding of the CIT(A) are reproduced as under:-

"5.4 I have carefully considered the arguments put forth by the appellant. Regarding the argument of the assessee that exemption u/s 10(5) is not limited to travel only within India and is applicable to a case involving foreign leg in the tour, it is seen that section 10(5) read with Rule 2B is very clear in intent that the said provisions are applicable in connection with proceeding on leave to any place in India. The appellant has infact bent the interpretation of the said provisions in

such a way which goes totally against the intent and spirit of these provisions. In all the cases involving foreign travel, one designated place in India is just covered for namesake, otherwise almost entire journey is a foreign travel for all practical purposes. In these circumstances, exemption u/s 10(5) would not be available."

In support, the Id CIT(A) relied upon the decision of the Coordinate Benches in case of Sh. Om Prakash Gupta vs. ITO (*ITA No. 938/Chd/2011 dated 29.04.2013*), State Bank of India, Kanpur vs. DCIT (*ITA No. 138 to 140/LKW/2015 dated 04.03.2016*) and State Bank of India, Nehru Place, Tonk Road, Jaipur vs. ACIT, TDS, Jaipur (*ITA No. 145/JP/2017 and 146/JP/2017 dated 28.03.2017*).

4. In State Bank of India, Nehru Place, Tonk Road, Jaipur vs. ACIT, TDS, Jaipur (*supra*), speaking through one of us, we have held as under:

"We have heard the rival submissions and perused the material available on record. The facts of the case are pari-materia with the decision of the Coordinate Bench in case of SBI vs DCIT, TDS, Kanpur (supra) wherein the relevant findings are as under:

"8. Having carefully examined the orders of the lower authorities in the light of the rival submissions and the documents placed on record, we find that as per provisions of section 10(5) of the Act, only that reimbursement of travel concession or assistance to an employee is exempted which was incurred for travel of the individual employee or his family members to any place in India. Nowhere in this clause it has been stated that even if the employee travels to foreign countries,

exemption would be limited to the expenditure incurred to the last destination in India. For the sake of reference, we extract the provisions of section 10(5) of the Act as under:—

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

[(5) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,—

(a) from his employer for himself and his family, in connection with his proceeding on leave to any place in India ;

(b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service,

subject to such conditions as may be prescribed (including conditions as to number of journeys and the amount which shall be exempt per head) having regard to the travel concession or assistance granted to the employees of the Central Government:

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 under section 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. We have also carefully examined the Circular placed by the Id. counsel for the assessee during the course of hearing, in which a reference was made to the interim order of the Hon'ble Madras High Court dated 16.2.2015. Through the interim order, the Hon'ble Madras High Court has permitted the bankers not to deduct TDS on or after 16.2.2015 on the amount paid/reimbursed to the employees of the bank in respect of LTC/HTC availed where the employee has visited a foreign city/country, irrespective of the fact whether the LFC bills were submitted and paid prior to 16.2.2015; meaning thereby this Circular was passed consequent to the interim order of the Hon'ble Madras High Court. But in the present case, the journey was undertaken in the year 2012 and the bills were settled during that year; meaning thereby at the relevant point of time when the bills were settled, there was no order of the Hon'ble Madras High Court and the assessee was under obligation to deduct TDS on the reimbursement of expenditure incurred by the assessee on foreign travel. In the light of these facts, we are of the considered opinion that the Revenue has rightly held the assessee to be in default, as the assessee has not deducted TDS intentionally on the

reimbursement of expenditure incurred on LTC/LFC. Moreover, the Id. CIT(A) has directed the Assessing Officer to recalculate the liability of TDS at 10%. We, therefore, find no infirmity in the order of the Id. CIT(A) and we confirm the same.

10. Similarly, the decision of the Coordinate Bench in case of Om Prakash Gupta vs ITO (supra) also supports the case of the Revenue wherein the Coordinate Bench has held 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 condition for allowing exemption under section 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 relations to the travel concession received by an employee from his employer or former employer, for proceeding on leave to any

place in India. The person is to undertake the journey to any place in India and thereafter return to the place of employment 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 fair 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, which has been reproduced by us in the paras hereinabove. In view thereof, we reject the claim of the assessee of exemption under section 10(5) of the Act. The ground of appeal No. 3 raised by the assessee is thus dismissed."

11. No contrary authority has been brought to the notice of the Bench. We, therefore, donot see any reason to deviate from the said view taken by the Coordinate Benches."

4. We have heard the rival contentions and perused the material available on record. The Id DR has submitted that the facts of the present case are identical to the facts before the Coordinate Jaipur Bench referred supra. In absence of any contrary authority, following the consistent view taken by the Co-ordinate Benches referred supra, the order of the Id CIT(A) is hereby affirmed.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 14/06/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/06/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- SBI, Tonk Road, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, TDS-2, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 198/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar