

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No 5437/Del/2016
Assessment Year: 2013-14**

**State Bank of India,
4th floor, 11, Sansad Marg,
New Delhi.
PAN AAACS8577K**

**vs ACIT, Circle-77 (1),
Laxmi Nagar,
Delhi**

(Appellant)

(Respondent)

**Appellant by: Shri Vivek Gupta, Advocate
Respondent by: Shri N.K. Bansal, Sr. DR**

Date of hearing: 8/7/2019

Date of order : 9 /7/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the common order dated 29/08/2016 in Appeal No.48/15-16 passed by the learned Commissioner of Income Tax (Appeals)-41, New Delhi, ("Ld. CIT(A)"), the assessee, namely, State Bank of India filed this appeal in respect of the Assessment Year 2013-14, on the following grounds:-

1. That the order of Ld. CIT(A), on aspects as stated in this appeal, is bad in law being contrary to the provisions of the law and without appreciation of the facts and circumstances of the case in their right perspective.
2. That on facts and circumstances of the case & provisions of the law, the Ld. CIT(A) erred in confirming the denial of exemption u/s 10(5) in respect of reimbursement of Leave Travel Concession involving

foreign leg through circuitous route as long as the employee designated place is in India for his Leave Travel Concession and he actually visits the place as designated.

3. Without prejudice to ground No. 2 above, the Ld. CIT(A) has also erred in treating the bank as on "assessee in default" by considering the bone fide belief of the bank as malafide for alleged non-deduction of TDS on reimbursement towards leave travel concession.
4. Without prejudice to ground No. 3 above, the Ld. CIT(A) has erred directing to produce the form No. 26A to the Ld.AO by the appellant for inclusion of such LTC claim by employees in their return of income when the Ld. AO can himself collect evidences from its own income tax Department as the appellant had already given the name, addresses and PAN of such employees during the course of assessment proceedings which the Ld. AO has also recorded in his assessment order.
5. That in light of the aforesaid grounds of appeals, the Ld. CIT(A) also erred in confirming the action of AO to levy interest under section 201(1A) of the Act.
6. That the appellant request be allowed to add, modify and delete any other ground (s) of appeal."

2. Ground No. 1 is general in nature. In respect of ground No. 2, Ld. AR submitted that Ld. CIT(A) decided this ground against the assessee while following the decision of the Lucknow Bench of ITAT in SBI vs. DCIT,TDS, Kanpur (2016) 67 taxmann.com 81 (Lucknow-Trib) and the assessee bank preferred an appeal to the Hon'ble High Court and, therefore, the result of this issue will follow the decision of the Hon'ble High Court.

3. Ld. AR argued grounds No. 3 and 4 in respect of the assessee being retreated as "assessee in default for non-deduction of TDS on reimbursement towards leave travel concession. Main plank of argument advanced by Ld. AR is that without making any enquiry by the learned Assessing Officer in respect of payment of taxes by the recipient of the perquisite, the assessee cannot be

held to be in default in view of Explanation 191 of the Income Tax Act, 1961 (for short "the Act").

4. In support of this, Id. AR placed reliance on the decisions of Agra Bench of the Tribunal in the case of Aligarh Muslim University vs. ITO (TDS) (2017) 83 taxman.com 364 (Agra-Trib); a coordinate Bench of this Tribunal in the case of the Branch Manager, Allahabad Bank vs. ITO in ITA Nos.5992-5994/del/2012 for Assessment Years 2002-03 to 2004-05; and also in assessee's own case for Assessment Year 2012-13 in ITA 3751/Del/ 2016.

5. Argument of the Ld. DR is that unless and until the assessee furnishes the details and such certificate as required under section 201(1) of the Act, it is not possible for the learned Assessing Officer to extend the benefit of proviso to Section 201(1) of the Act. In this case, Ld. DR submits that, though the assessee claims to have furnished the details of the recipients with thereupon number, amount claimed and paid with the date of journey, there is no full compliance with the requirements of the proviso to Section 201(1) of the Act.

6. We have gone through the record in the light of the submissions made on either side. Even before us also the assessee furnished the list of officers who have been sanctioned LTC for a designated place in India with the details like PAN number, amount claimed and paid, date of journey and registration.

7. Under proviso to Section 201(1) of the Act, the person failing to deduct the whole or any part of the tax in accordance with the provisions of the Act on the sum paid to or credited to the account of a resident, shall not be deemed to be an assessee in default in respect of such tax if resident,-

- i. has furnished his return of income under section 139;
- ii. has taken into account such sum for computing income in such return of income; and

iii. has paid the taxes due on the income declared by him in such return of income,

and any person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

8. On a comparison of the details furnished by the assessee, we do not find those to fit in the requirements stipulated by the proviso to Section 201(1) of the Act. The assessee has to furnish the details as to whether the recipient of the amounts have filed their returns of income by taking into account the amounts in question and the paid taxes thereon along-with a certificate to that effect. In the circumstances, we are in agreement with the Ld. DR that there is no full compliance with the requirement of law.

9. In assessee's own case for the assessment year 2012-13 in ITA 3751/Del/2016, a coordinate Bench of this Tribunal having considered the decisions of the Tribunal in Aligarh Muslim University (supra) and Branch Manager, Allahabad bank (supra) and observed that since the assessee had not place the requisite information before the Ld. AO, he is not under any obligation to make such enquiries without having the requisite information and on that ground the matter was remanded to the file of the Ld. AO for making necessary verification with regard to payment of tax of such a receipt by the recipient.

10. Facts being similar, we find it difficult to take a different view from the view taken by a coordinate Bench of this Tribunal in assessee's own case for Assessment Year 2012-13, having considered the decisions of the Tribunal in the case of Aligarh Muslim University (supra) and Branch Manager, Allahabad Bank (supra). While respectfully following the same, we set aside the impugned order and remand the issue to the file of the Ld. AO with a direction to re-adjudicate the issue afresh after affording an opportunity of being heard

to the assessee in the light of our above observations and at the same time directing the assessee to place all relevant information required under law before the Ld. AO.

11. In the result, appeal of the assessee is, accordingly, allowed for statistical purpose

Pronounced in the open court on 9TH July, 2019.

Sd/-

**(O.P.KANT)
ACCOUNTANT MEMBER**

sd/-

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 9th July, 2019
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	8.7.2019
Draft placed before author	9.7.2019
Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	