IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

Sl. No.	*ITA No. & Asst. year*	*Appellant*	*Respondent*
1	1118/Bang/2019 (2011-12)	State Bank of India, Jigani Branch, Bengaluru	Addl. CIT, TDS Range-3, Bengaluru
2.	1119/Bang/2019 (2011-12)	State Bank of India, Stressed Assets Management Branch, Bengaluru.	-do-
3-4	1120 &1121/Bang/2019 (2011-12 & 2012-13)	State Bank of India, Rajarajeshwari Branch, Bengaluru.	-do-
5	1122/Bang/2019 (2013-14)	State Bank of India, Liability Centralized Processing Centre, Bengaluru.	-do-
6	1168/Bang/2019 (2012-13)	State Bank of India, Jayanagar 2nd Block Branch, Bengaluru.	-do-
7	1169/Bang/2019 (2012-13)	State Bank of India Gollahalli Branch, Bengaluru.	-do-
8	1170/Bang/2019 (2013-14)	State Bank of India, Kattriguppe Branch, Bengaluru.	-do-
9	1171/Bang/2019 (2012-13)	State Bank of India, Metro Branch, Bengaluru.	-do-
10	1172/Bang/2019 (2012-13)	State Bank of India, Specialized Agri Commercial Branch, Bengaluru.	-do-
11-12	1237 & 1238/Bang/2019 (2011-12 & 2012-13)	State Bank of India, Focal Point Link Branch, Bengaluru.	-do-

Assessees by : S/Shri Raghavendra Chakravarthy & H.Muralidhar, CA
Respondent by : Shri M.Vijay Kumar, Add.CIT(DR)

Date of hearing: 07/11/2019
Date of pronouncement: 18/11/2019

O R D E R

Per BENCH:

The assessee-bank filed appeals for different branches against orders of the CIT(A), Bengaluru-6, Bengaluru, passed u/s 271C and 250 of the Income-tax Act,1961 ['the Act' for short]. Since all these appeals have a common and identical issue. Hence, are clubbed and heard together and common consolidated order is passed. For the sake of convenience, we shall take up the assessee's appeal in ITA No.1237/Bang/2018 and the facts narrated therein.

2. Brief facts of the case are that the assessee-bank branch is a nationalized bank and has filed TDS returns u/s 206 of the Act read with rule 37 of the IT Rules. There was a survey operations u/s 133A on 26/12/2013 and the revenue found that the assessee bank has not deducted TDS on leave travel concession (LTC) paid to employees and hence the assessee was treated as 'assessee in default' within the meaning of section 201 of the Act. The Assessing Officer (AO) found there is no TDS obligation on the reimbursement of LTC provided to the employees. Further assessee claimed exemption u/s 10(5) of the Act towards reimbursement of LTC/LFC and finally AO considered that assessee has not deducted TDS and passed order u/s

201 of the Act raising demand of Rs.31,085/-. The assessee has allowed exemption u/s 10(5) to the employees for travel outside India and travel by circuitous route which is not in accordance with provisions of section 10(5) of the Act read with rule 2B of the IT Rules, whereas exemption u/s 10(5) is available only for travel to any place in India and restricted to the amount of expenses actually incurred for the purpose of travel read with rule 2B of IT Rules. On appeal, the CIT(A) confirmed the action of the AO and dismissed the quantum appeal. Subsequently, AO issued show cause notice u/s 271C of the Act. The assessee has filed explanation by letter dated 9/11/2/17 explaining reasons and Reasonable cause as referred at para 3 and 4 duly supported with judicial decisions on sufficient cause whereas AO dealt on provisions of section 271C of the Act and provisions of section 10(5) of the Act and conditions prescribed under rule 2B. AO, considering reply of the assessee in penalty proceedings provisions and rules observed that the assessee has defaulted in non-deduction of income-tax as LTC reimbursement credited to employees is not added to their total income and was considered exempt u/s 10(5) of the Act read with rule 2B of the IT Rules and violated the Rules. AO further observed that the provisions of section 10(5) of the Act provided only for reimbursement of expenses which are incurred on travel of employees and his family to any place in India subject to certain limits to be treated as exempt from tax. The contentions of

the assessee were not accepted as the employees are reimbursed in respect of actual expenditure incurred for travel within India. The CIT(A) has confirmed the order of the AO in respect of non-deduction of TDS. The AO dealt on the provisions and limitation of imposing penalty and considering the fact that TDS is not deducted on payments and the reasonable cause was not explained. AO levied penalty of Rs.31,085/- and passed order u/s 271C of the Act dated 27/11/2017.

3. Aggrieved by the penalty order, assessee filed appeal with the CIT(A). The CIT(A) having considered grounds of appeal, submissions and judicial decisions has concurred with the findings of the AO and confirmed penalty and dismissed the assessee's appeal.

4. Aggrieved by the order of the CIT(A), the assessee has filed appeal before the Tribunal. At the time of hearing, ld. AR argued that the CIT(A) has erred in confirming penalty levied by the AO without considering the Reasonable cause and the facts that the assessee has accepted the demand raised in proceedings u/s 201 of the Act and has paid. Ld. AR further submitted that the assessee has prima facie good case on Reasonable Cause and was on bona fide belief that no TDS to be deducted. Ld. AR further submitted that the payments are supported with evidence and relied on judicial decisions and prayed for deleting the penalty.

Contra, learned DR supported the order of the CIT(A).

5. We heard rival submissions and perused material on record. Prima facie, the sole disputed issue in respect of penalty levied u/s 271C of the Act for non-deduction of tax at source on LTC. The assessee-bank has failed to deduct TDS but in proceedings u/s 201 of the Act, the assessee has accepted the claim and paid the amounts. The fact that non-deduction of TDS has come out in the survey operations u/s 133A of the Act. We found that the assessee has not deducted TDS and explained reasonable cause in the penalty proceedings and the assessee's action is not wanton but on a bona fide belief. We found the co-ordinate bench of Tribunal in the case of *Syndicate Bank vs. ACIT* in ITA Nos.651 to 656/Bang/2019 dated 19/07/2019 has deleted the penalty u/s 271C of the Act and has observed at paras.11 to 14 which read as under:

> *"11. The learned counsel for the Assessee submitted that when the Hon'ble High Court admits an appeal against the order in quantum proceedings, no penalty can be levied on the Assessee. It was submitted that when the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable. In such circumstances no penalty can be levied u/s 271C. In this regard the learned counsel for the Assessee placed reliance on the decision of the Hon'ble Karnataka High Court in the case of CIT v. Ankita Electronics Pvt. Ltd. 379 ITR 50 (Kar) wherein it was held that the admission of substantial question of law by the High Court lends credence to the bona fides of the assessee in his action and hence no penalty can be imposed on such additions/defaults. He also placed reliance on a decision of the Hon'ble ITAT Jaipur Bench in the case of State Bank of India Vs. ACIT (2019) 101 taxmann.com 61 (Jaipur-Trib.) wherein on identical default of non deduction of tax at source on perquisite not exempt u/s.10(5) of the Act and imposition of penalty for such failure u/s.271C of the Act, the ITAT Jaipur deleted penalty imposed u/s.271C of the Act, observing as follows:-*

"10. We also refer to Hon'ble Supreme Court decisions in case of CIT v. I.T.I. Ltd. [2009] 183 Taxman 219 (SC) and CIT v. Larsen & Toubro Ltd. [2009] 181 Taxman 71 (SC) wherein it was held that the beneficiary of exemption under section 10(5) is an individual employee. There is no circular of Central Board of Direct Taxes (CBDT) requiring the employer under section 192 to collect and examine the supporting evidence to the declaration to be submitted by an employee(s). Therefore, it was held that an assessee-employer is under no statutory obligation under the Income-tax Act, 1961, and/or the Rules to collect evidence to show that its employee(s) had actually utilized the amount(s) paid towards leave travel concession(s)/conveyance allowance.

11. We thus find that there is nothing specific which has been provided by CBDT in its circular issued under section 192 for the relevant financial year. What has been reiterated is adherence to the provisions as contained in section 10(5) read with Rule 2B. Similarly, the Hon'ble Supreme Court has also held that an assessee employer is under no statutory obligation under the Income-tax Act, 1961, and/or the Rules to collect evidence to show that its employees had actually utilized the amount paid towards leave travel concession. Even though the same is not required as per decision referred supra, in the instant case, the assessee bank has been diligent, and has collected and brought on record evidence to show that its employees had actually utilized the amount paid towards leave travel concession.

12. At the same time, in terms of adherence to the provisions as contained in section 10(5) read with Rule 2B, we find that the assessee bank has allowed exemption to all its employees who have submitted LFC claim. The Revenue has not disputed the LFC claim in respect of these employees except in respect of 12 employees. These 12 employees, who have travelled to foreign countries as part of their travel itinerary with designated place of travel in India, and in respect of which they have submitted their LFC claim, has been disputed by the Revenue as not eligible for exemption under section 10(5) in respect of amount reimbursed towards foreign leg of their travel. The explanation of the assessee bank is that while calculating the tax liability of its employees, the figure of LFC was always exempted and this rule was being followed since many years, being in a nature of thumb rule and TDS exemption of LFC was thus allowed almost mechanically year after year. To our mind, it is important to be consistent but at the same time, one needs to be mindful of what been submitted by the employees towards their LFC claims. It appears that the

assessee bank has looked at these 12 employees' claim broadly, as in other cases, in terms of actual travel being undertaken, the designated place being in India and the amount of claim not exceeding the economy fare of the national carrier by the shortest route to the place of destination. However, the Revenue's case is that what the assessee bank has failed to consider is that the travel plan includes the foreign leg of travel and corresponding travel expenses which is not eligible for exemption under section 10(5) of the Act. However, the assessee's bank explanation to this effect is that section 10(5) and Rule 2B doesn't place a bar on travel to a foreign destination during the course of travel to a place in India and there is nothing explicit provided therein to prohibit such travel in order to deny the exemption. Having considered the rival submissions and facts on record, we are of the opinion that the assessee bank has undertaken reasonable steps in terms of verifying the assessee's claim towards their LFC claims and is aware of employees travelling to foreign countries as part of their travel itinerary but at the same time, there is an error of judgment on part of the assessee bank in understanding and applying the provisions of section 10(5) of the Act. Therefore, we are unable to accept the Revenue's contention that the assessee bank has not deducted the tax intentionally, fully knowing that the LFC is applicable for travel in India only and no foreign travel is allowable as it is a case of error of judgment and no malafide can be assumed on part of the bank. Further, nothing has been brought on record which in any ways suggest connivance on part of the assessee bank or forged claims submitted by the employees and which has been discovered by the Revenue during the course of its examination. As fairly submitted by the assessee bank, while calculating the estimated tax liability of its employees, it always consider LFC claim as exempt under section 10(5)and the same position, being followed and accepted consistently in the past years, was followed in the current financial year as well. However, for the first time, after the survey by the tax department, this issue arose for consideration and after the judgment of the Tribunal, the matter got clarified and the assessee bank has duly complied and deposited the outstanding demand along with interest and has taken corrective steps in subsequent years as well.

13. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that there was reasonable cause in terms of section 273B of the Act for not deducting tax by the assessee Bank. In the result, the penalty so levied under section 271C is hereby directed to be deleted."

12. The learned DR relied on the order of CIT(A) and further drew our attention to a decision of ITAT Bangalore Bench in the case of another branch of the Assessee in ITA No.532 to 536/Bang/2019 order dated 12.7.2019, wherein this Tribunal remanded the question of imposition of penalty to the CIT(A) for fresh consideration to see parity of facts between the case of the Assessee and the decision of ITAT Jaipur Bench in the case of State Bank of India (supra).

13. We have carefully considered the rival submissions. It is undisputed that as against the order of the Tribunal holding the Assessee to be in default for non deduction of tax at source, the Assessee has preferred appeal before the Hon'ble Karnataka High Court and the question whether the Assessee is guilty of non deduction of tax at source or not is to be decided in such appellate proceedings. In this background of facts, the question is whether penalty can be imposed on the Assessee u/s.271C of the Act. The Hon'ble Karnataka High Court in the case of Ankita Electronics Pvt.Ltd. (supra) had an occasion to deal with identical issue and the Court held as follows:-

> *"6. While dismissing the appeal, the Tribunal has observed that the additions in respect of which penalty under Section 271(1)(c) of the Act was levied, have been admitted by the High Court for consideration and thus found that the additions made were debatable and would lead credence to the bonafides of the assessee. It thus held that the matter of imposing penalty under Section 271(1)(c) of the Act, was not exigible in the case on hand.*
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> *7. The Tribunal placed reliance on decision of the ITAT, Mumbai in the case of Nayan Builders & Developers (P.) Ltd. v. ITO [IT Appeal No. 2379/Mum/2009, dated 18-3-2011], which had also held that "the admission of substantial questions of law by the High Court lends credence to the bona fides of the assessee in claiming deduction. Once it turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty."*
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> *8. The assessee in the present case had disclosed all the materials on which it was claiming deduction. The matter as to whether the deduction was to be given or not, was taken up by the revenue authorities and it was held that certain deductions claimed by the assessee were to be disallowed. It is not disputed that the questions regarding the disallowance of the deductions claimed by the assessee is under consideration by the High Court, as the appeal filed by the assessee has been admitted,*

on the substantial questions of law which have been reproduced hereinabove.

9. The mere admission of the appeal by the High Court on the substantial questions of law as have been quoted above, would make it apparent that the additions made were debatable. The Tribunal has thus rightly held that the admission of substantial questions of law by the High Court leads credence to the bona fide of the assessee and therefore, the penalty is not exigible under Section 271(1)(c) of the Act. Merely because the claim of the assessee has been rejected by the revenue authorities would not make the assessee liable for penalty."

14. In the light of the aforesaid decision of the Hon'ble Karnataka High Court, we are of the view that levy of penalty u/s.271C of the Act, in the given facts and circumstances of the case, cannot be sustained and the same is directed to be deleted."

Respectfully following ratio of the co-ordinate bench decision, we hold that there is a Reasonable cause in the present case. Hence, penalty u/s 271C is not sustainable. Accordingly, we direct the AO to delete the penalty and allow the grounds of appeal of the assessee.

Similarly, the assessee has filed appeals ITA Nos.1118 to 1122, 1168 to 1172 and 1237 & 1238/Bang/2019 and the ratio of decision of present appeal in ITA No.1237/Bang/2019 is applicable as the facts are similar and identical. Accordingly, we direct the AO to delete the penalty and allow the grounds of appeal of the assessee.

6. In the result, the assessee's appeals in ITA Nos.1118 to 1121, 1123, 1168 to 1172 & 1237 & 1237/ang/2018 are allowed.

Order pronounced in the open court on 18th November, 2019.

Sd/-	Sd/-
(B.R. BASKARAN)	**(PAVAN KUMAR GADALE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Place : Bengaluru
D a t e : 18/11/2019
srinivasulu, sps

Copy to :

1 Appellant
2 Respondent
3 CIT(A)-
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore