

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2454/Ahd/2017
Assessment Year 2013-14**

State Bank of India, Zonal Administrative Office, C.N. Vidhyalaya Campus, Ambawadi, Ahmedabad PAN: AAACS8577K (Appellant)	Vs	The ITO, TDS-3, 2 nd Floor Room No. 4 Najivan Trust Building B/H Guj Vidyapith Off Ashram Road, Ahmedabad (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri S.N. Divetia, A.R.**

Date of hearing : 26-09-2019
Date of pronouncement : 18-11-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A)-8, Ahmedabad dated 21-08-2017, in proceedings under section 201(1)/201(1A) of the Income Tax Act, 1961; in short of the Act.

2. All the grounds of appeal of the assessee are inter-connected to the issue of sustaining the demand raised u/s. 201 and 201(1A) of the act on reimbursement of LTC/LFC in the cases where employees have travelled abroad was not exempt u/s. 10(5) of the act and the assessee was in default in non-deduction of tax from such LTC/LFC.

3. The fact in brief is that the assessee is a banking company running business of banking. A verification/survey was carried out in the case of State Bank of India, Zonal Office, Office Administrative Section S.M. Ahmedabad on 25th Feb, 2014. During the course of verification, it was noticed that some employees have performed leave travel through circuitous route via foreign countries therefore the reimbursement made by the assessee was not exempt u/s. 10(5) of the act. The assessing officer has noticed that the following three employees have availed LTC/HTC during the Financial Year 2012-13 as under:-

Sl. No	Payment Date	Name	Place of Visit outside India	Amount
1	26/05/2012	S. K. Singh	Dubail	252240.00
2	02/06/2012	P. M. Patel	Singapore	392128.00
3	20/08/2012	Arvind Gupta	London, Switzerland	391128.00
	Total'			1035496.00

The assessee has sanctioned the aforesaid claim of Rs. 10,35,496/- without deduction of any tax in spite of fact that all these employees have visited foreign countries. The assessing officer has referred section 10(5) of the I.T. Act r.w. Rule 2B of the I.T. Rule that LTC is allowed only for proceeding leave of any place in India. In the assessment order, the assessing officer

has reproduced the provision of section 10(5) and Rule 2B of the I.T. Rule stating that claim of LTC of overseas travel does not fall within the ambit of section 10(5) of the act. The assessing officer has stated that section 10(5) as well as relevant rule 2B do not stipulate that journey to any place in India would be made via a place outside India and therefore the assessing officer has held that the claim of the assessee is not exempt u/s. 10(5) of the act. Consequently, the assessing officer concluded that assessee has failed to deduct tax on leave travel concession reimbursed to its employees on foreign travel performed by them, therefore, the assessee was treated as assessee in default and order u/s. 201(1)/201(1A) was passed.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

5. We have heard the rival contentions and perused the material on record. The CIT(A) has upheld that order passed by the ITO, TDS u/s. 201(1) and 201(1A) of non-deduction of tax on the ground that assessee was not exempt from the tax under the provision of section 10(5) of the act in respect of LFC/LTA travelled overseas to the destination in India. The assessee was of the view that in case an employee travelled outside India during the course of his visit to a place in India reimbursement is made to him for his entire journey by circuitous route provided by the reimbursement made to him is limited to the actual fare/hire charges for the entire journey or the cost of fare to his home town/designated place, by the shortest route, by the entitled class whichever is lower. After perusal of the provision of section 10(5) of the act, we observed that the said provision was introduced

in order to motivate the employees and also encourage tourism in India, and therefore, the reimbursement on LTC/LFC was exempted but there was not any such provision which provide exemption to the employees for travelling abroad to get benefit of LTC by virtue of section 10(5) of the act. We consider that on identical facts and similar issues have been adjudicated by the ITAT Lucknow in the case of State Bank of India V. DCIT(TDS) vide 67 taxmann.com 81. The relevant part of this decision is reproduced 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 within any of the following 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:

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 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 ld. 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 ld. CIT(A) and we confirm the same.

10. *In the result, appeals of the assessee are dismissed."*

In the light of the above facts, circumstances and legal findings, we consider that assessee is not entitled for exemption u/s. 10(5) of the act, therefore, we do not find any merit in the appeal of the assessee. We observed that the claim of the assessee for exemption is without legal basis and assessee has failed to prove that how such foreign travel expenses would come within ambit of section 10(5) of the act. After taking into consideration the above judicial views and detailed finding of ld. CIT(A), we are of the view that the decision of ld. CIT(A) is justified and no interference is required. Therefore, the appeal of the assessee is dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 18-11-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 18/11/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

