IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BENGALURU

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

I.T.A No.1640/Bang/2019
(Assessment Year: 2012-13)

State Bank of India, Horamavu Branch, #2, MVR Suryakanthi, Munireddy Layout, Horamavu Main Road, Bengaluru – 560 043.	Vs.	The Income Tax Officer (TDS), Ward-3(2), Bengaluru.

[PAN: BLRS 34343B]

(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)
अपीलार्थी की ओर से / Appellant by	:	Shri Muralidhara H, C.A
प्रत्यर्थी की ओर से/Respondent by	:	Smt. R. Premi, JCIT
सुनवाई की तारीख/ Date of hearing	:	02.12.2019
घोषणा की तारीख /Date of Pronouncement	:	04.12.2019

O R D E R

PER D.S. SUNDER SINGH, A.M:

This appeal filed by the assessee-bank namely State Bank of India (hereafter referred as "SBI") is directed against the order of the Commissioner of Income Tax (Appeals)-6, Bengaluru (hereafter referred as "CIT(A)") in ITA No.CIT(A), Bengaluru-6/10264/2018-19 dated 11.02.2019 for the Assessment Year (AY) 2012-13.

Delay:

2. There was a delay by 53 days in filing the appeal. The assessee filed affidavit requesting for condoning the delay and explaining the reasons for

the delay. We have gone through the affidavit and after having heard both parties the delay is condoned.

3. All the grounds of appeal are related to confirming the order of the Income Tax Officer (TDS), Ward-3(2), Bangalore ("AO" in short) by the Ld. CIT(A) in respect of the demand raised u/s. 201(1) & 201(1A) of the Income Tax Act, 1961 ("the Act") relating to the payment made by the deductor(Assessee) on account of reimbursement of Leave Travel Concession (LTC) to foreign countries. In this case, the deductor has made the payment of Rs. 3,61,650/- to Shri Ravi Kulkarni an employee of the assessee-bank to a destination in India via Bangkok, Kuala Lumpur and Colobmo relating to the foreign legs of travel. The said amount was reimbursed by the assessee for LTC/LFC. The assessee treated the entire amount as exempt u/s. 10(5) of the Act and did not deduct TDS thereon. The AO viewed that the assessee is obliged to deduct the TDS on Foreign legs of travel and the expenditure relatable to the foreign legs of travel is not exempt u/s. 10(5) of the Act as claimed by the assessee in their TDS return. Therefore, the AO raised the demand of Rs. 1,82,271/- for assessee's failure to deduct tax at source on LTC/LFC paid to the employees of the assessee bank. The demand of Rs. 1,82,271/- consists of the remand u/s. 201(1) of the Act of Rs. 1,08,495/- and the interest u/s. 201(1A) of the Act Rs. 73,776/- aggregating to Rs. 1,82,271/-. Aggrieved by the order of the AO, the assessee went on appeal before the ld. CIT(A) and the ld. CIT(A) has dismissed the appeal of the assessee in his detailed

order following the order of this Tribunal in the case of *Syndicate Bank vs. Asst. CIT (TDS) [2017] 80 taxmann.com 179* and confirmed the demand raised by the AO. Against which the assessee filed appeal before this Tribunal.

4. We heard the rival submissions and perused the material placed on record. In the instant case, the assessee reimbursed the expenses relating to foreign travel and claimed the deduction u/s. 10(5) of the Act as LTC/LFC. As per the provisions of s. 10(5) of the Act, the payment made to the employee for foreign visit is not exempted and the said amount is taxable in the hands of the employee, thus the assessee is obliged to deduct tax at source u/s. 192 of the Act. This issue was discussed in detail by the ld. CIT(A) in his order dated 11.02.2019. For the sake of clarity and convenience, we extract the relevant part of the order of the ld. CIT(A), which reads as under:

> *"4.2.3 I have considered the points raised in the written submissions and do not find any merit therein. As rightly pointed out by the AO, the provisions of the Act overrule any internal guideline of an employer/deductor/any association. Further, applying the principle of consistency does not mean that the appellant can continue to violate the letter and spirit of the act and Rules merely because the Department had not objected o the same earlier. The material facts relating to the wrong claims made by the appellant's employee and the appellan5t's collusion in facilitating the violation of the law came to the AO's notice when he made enquiries u/s. 133(6) of the Act with the appellant. Thus there was adequate reason for the AO to take a different view from that of the Department in the earlier years. It is settled law that the principle of res judicata is not applicable to income tax proceedings as each assessment year is a separate proceedings. The appellant's claim for applying the principle of consistency is also not sustainable in light of the following judicial decisions:*
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> *i) In CIT vs. Seshasayee Industries Ltd. (Mad) 242 ITR 691, the Madras High Court held that the fact its claim was not questioned in earlier years does not entitle the assessee to contend that the law should not be applied during the current A.Y.*
>
> *ii) In Indian Vaccines Corporation Ltd. vs. ITO 2010-TIOL-587 ITAT Del and in Jat Education Society vs. DCIT (ITAT, Del) 10*

taxmann.com 127, it was held that a patently wrong view cannot be allowed to perpetuate on the basis of the principle of consistency.

4.2.4 In the written submission the AR has also relied on various judicial precedents to assert its bona fides in reimbursing its employees' LTC/LFC claims. However, several of the case laws relied upon by the appellant have been considered by the Hon'ble ITAT 'C' Bench, Bengaluru in the appellant's own cases in ITA Nos.1395 to 1412, 1426 to 1426 & 1456 to 1458 which have been decided by the ITAT against the appellant by relying on its decision in the case of Syndicate Bank vs. Asst. CIT (TDS) [2017] 80 taxmann.com 179, wherein the facts of the case were identical with those of the appellant. The relevant portion of the ITAT order is reproduced below:

7. *We have carefully considered the rival submissions, perused the relevant materials on record and also the case laws relied on by either party.*

7.1 *The solitary issue for consideration now is: Whether the A.O. was justified in treating the assessee-Bank as an 'assessee in default' u/s. 201(1) of the Act for making short deduction u/s. 192 of the Act in allowing exemption u/s. 10(5) of the Act towards the reimbursement of LTC/LFC claims of its employees?*

7.2 *Briefly stated, a survey u/s. 133A of the Act had taken place in the business premises of the assessee-Bank on 18.3.2014 by the ACIT, TDS Circle 18(2), Bengaluru –the A.O. – and it was noticed during the course of survey that the assessee-Bank (the deductor) had allowed exemption u/s. 10(5) of the Act to its employees for travel outside India and also travelled by a circuitous route which was not in accordance with the provisions of s.10(5) of the Act r.w. Rule 2B. Accordingly, the A.O. treated the assessee-Bank as an 'assessee in default' u/s. 201(1) of the Act for the elaborate reasons set out in impugned assessment orders for the assessment years under dispute. The A.O.'s stand was duly confirmed by the CIT(A) for the reasons recorded in the impugned orders under dispute. During the course of hearing before us, the learned Counsel had made certain arguments which are dealt with as under:*

:(i) that there was no requirement under the law or the rules that the journey should be performed through shortest route:

Rule 2B of Income-tax Rules, 1962 says

Conditions for the purpose of section 10(5)

*2B. ** ** **

(i) where the journey is performed on or after the 1st day of October, 1997, by air, an amount not exceeding the air economy fare of the national carrier by the shortest route to the place of destination;*

*** ** **

As per the provisions of section 10(5) of the Income-tax Act & Rule 2B of Income-tax Rules, the reimbursement of LTC is exempt u/s. 10(5) of Income-tax Act only when all the conditions are followed.

The conditions are as follows:

- *There must be a reimbursement of*
- *Actual expenditure incurred on*
- *Travelled within India by taking a*
- *Shortest route*

[Refer: Pages 4 & 5 of A.O.'s order]

The above explanation dispels the assessee's argument.

(ii) the CIT(A) erred in holding that the travel should be within India:

The assessee Bank itself vide its letter dt: 26/3/2014 had stated as under:

*(i) ** ** **

(ii) In our case, we have reimbursed the LFC only in respect of journey the destination of which is in India. Further, the quantum was restricted to the air fare by economy class through the shortest route……..."

[Courtesy: P 6 of A.O.'s order]

7.3 *The above narrations are highlighting the contradictions of the assessee's defense. The assessee-Bank had in its grounds of appeal contended that "4.5……..that the appellant bank was under the bona fide belief that the amount was exempt u/s. 10(5) and as such, the appellant bank cannot be treated as 'an assessee in default' u/s. 201 of the Income-tax Act, 1961". On the contrary, on examination of the case on hand, it is explicit that the assessee bank had not applied its mind while applying the provisions of s.10(5) of the Act with letter and spirit and allowed exemption in a mechanical way. As rightly highlighted by the learned DR in his submissions, the provisions of s. 10(5) of the Act are clear and only the reimbursement of expenses which were incurred on travel of employees and his family to any place in India subject to certain conditions are exempt. Since the employees of the assessee-Bank had travelled to foreign countries, the benefit of exemption available u/s. 10(5) of the Act should not have been granted. We agree that the assessee-Bank may not have been aware of the details of the employees' places or destination of visits at the time of advancement of LTC/LFC amounts. However, at the final settlement of the claims of the employees under LTC/LFC, the assessee-Bank should have obtained all the relevant details such as the places of visits (destinations) etc. When the assessee-Bank was aware of the fact that its employees had visited foreign countries by availing LTC/LFC concession and so he was not entitled for exemption of reimbursement of LTC u/s. 10(5) of the Act, the assessee-Bank was under obligation to deduct tax at source treating such an amount as not exempt. Since the assessee-Bank had failed to enforce its duty to deduct tax at source as envisaged in section 192 of the Act, it is tantamount that the assessee-Bank was an 'assessee in default' u/s. 201(1) of the Act and the A.O.(TDS) was within her domain to hold so. Moreover, the assessee-Bank does not have a case that its employees have included the LTC/LFC in their taxable salary and paid tax on the same. Moreover, the national carrier, i.e., Air India/Indian*

Airlines had also been offering LTC package to various destinations in India and allowing passengers to visit the foreign countries at the full fare chargeable to the final destination in India and it was clearly mentioned in Air India website that the value of LTC was chargeable to Income Tax.

***7.4** The Hon'ble ITAT, Lucknow Bench 'A' in the case of SBI case (supra) on identical facts had decided the issue in favour of Revenue. For appreciation of facts, the relevant portion of the findings of the Hon'ble Bench is as follows:*

"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 u/s. 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."

***7.5** On identical facts, the Hon'ble ITAT, Chandigarh 'A' Bench in the case of Om Parkash Gupta (supra), had recorded its findings 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 conditions for allowing exemption u/s. 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 relation to the travel concession received by an employee from his employer or former employer, for proceeding on leave to any place in India and thereafter return to the place of employer 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 fare 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…… In view thereof, we reject the claim of the assessee of exemption u/s. 10(5) of the Act……"

7.6 *In the case of HCL Info systems Ltd. (supra) – relied on by the assessee-Bank - the issue was that the A.O. had rejected the claim of the assessee (HCL) of treating LTC allowance as exempt u/s. 10(5) for the reason of not verifying the evidence with regard to incurring of actual expenditure. However, the Tribunal had accepted the argument of the assessee that the CBDT Circulars did not specifically require verification of the evidence and, thus, held that there was sufficient material on record – by way of declarations furnished by the employees concerned – for the assessee to form a bona-fide belief that LTA granted to its employees was exempt u/s. 10(5) of the Act. On an appeal, the Hon'ble Delhi High Court concurred the findings of the Tribunal by holding that 'the bona fides of the assessee was accepted by the first appellate authority and were duly confirmed by the Appellate Tribunal.'*

7.7 *On a careful perusal of the ruling of the Hon'ble Court (supra), we are of the view that the said ruling of the Hon'ble Court is distinguishable so far as the issue under dispute is concerned. The present assessee-Bank had not brought any credible material on record to remotely suggest that that the basis [by way of declarations furnished by the employees concerned] for formation of such a bona fide belief and honest opinion on exemption u/s. 10(5) of the Act of such an allowance on a circuitous route when it was evident that the employees had undertaken foreign travel.*

7.8 *In the case of Nestle India Ltd. (supra) – relied on by the assessee-Bank – the issue, in brief, was that on a perusal of the annual return of the assessee, the ACIT(TDS) noticed that the assessee had made short deduction of TDS while computing the income of its employees chargeable under the head 'salaries', the conveyance allowance (CA)/reimbursement granted to them had not been included in their taxable salaries. In compliance to the A.O.'s query, the assessee, inter alia, explained that the CA was being paid as reimbursement to those employees who had not been provided with vehicles against declaration that they had actually incurred the said amount for the purpose of conveyance etc., and, therefore, such expense was exempt u/s. 10(14) of the Act. The A.O.(TDS) took a divergent view that the assessee was paying salaries to its employees under the garb of CA in order to avoid taxation and, accordingly, held the assessee as an 'assessee in default'. When the issue went in appeal before the Tribunal which held that the assessee was under a bona fide belief that CA was not taxable and, hence, neither order u/s. 201 nor interest u/s. 201(1A) was leviable. The stand of the Tribunal was concurred by the Hon'ble High Court. However, in the present case, the assessee-Bank had failed to cite the pronouncement of any order of the judiciary to demonstrate why and how it formed the belief that such concession on a circuitous route was exempt u/s. 10(5) of the Act. Thus, we are of the view that this case law relied on by the assessee-Bank cannot be of any help to it.*

7.9 *In the case of ITC Ltd. (supra) – relied on by the assessee-Bank – the issue involved was non-deduction of tax at source from the conveyance allowance (CA) paid to its employees. The Hon'ble Tribunal allowed the assessee's case after accepting the explanation of the assessee to be bona fide, i.e., the assessee had amply demonstrated that belief was based on a meeting with the representatives of the assessee-company, declarations obtained from the employees etc. It was only on the strength of such demonstration that the explanation being honest, fair and having a bona fide belief, the Tribunal accepted the assessee's contention which has been sustained by the Hon'ble High Court. However, in the present case, the assessee-Bank had not made any honest effort to justify how its bona fide belief was formed to exclude such allowance from salary of the employee was exempt u/s. 10(5) of the Act. This case law relied by the assessee-Bank is distinguishable.*

7.10 *We have with due respects perused the ruling of the Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. (supra) – relied on by the assessee-Bank – wherein the issue before the Hon'ble Court was that 'the employer is not under any statutory obligation under the Income-tax Act, 1961 or the rules to collect evidence to show that the employee had actually utilized the amount paid towards LTC or conveyance allowance u/s. 10(5).' However, the present issue is: Whether the deductor (assessee-Bank) was right in allowing exemption u/s. 10(5) to its employees for travel outside India and travel by a long circuitous route which was, according to the A.O., not in accordance with the provisions of s.10(5) read with Rule 2B? Thus, the issue before the Hon'ble Court (supra) was on a different footing and has no relevance whatsoever to the matter under consideration. The ruling of the Hon'ble Supreme Court relied on by the assessee-Bank, in our considered view, cannot come to its rescue.*

8. *As rightly highlighted by the Hon'ble Tribunal, Lucknow Bench (supra) and careful perusal of the provisions of s.10(5) of the Act, we are of the view that the said 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 s.10(5) of the Act****. However, in the present case the employees of the assessee-Bank have travelled outside India and raised claims of their expenditure incurred therein. There is no dispute that the assessee-Bank may not be aware with the plan of travel of its employees initially, however, at the time of settlement of LTC/LFC bills, the employees should have placed comprehensive details before the assessee-Bank as to where they have travelled/visited and raised the claims, that means to say, the assessee-Bank was well aware of the fact that its employees have travelled in foreign countries too by availing LTC/LFC for which they were not entitled for exemption u/s. 10(5) of the Act. Such being the scenario, the assessee-Bank cannot now plead that it was under the bona fide belief that the amounts claimed were exempt u/s. 10(5) of the Act. Thus, the Assessing Officer(TDS) was within her domain to term/charge that the assessee-Bank was under obligation to deduct TDS on such payments. Since the assessee-Bank had failed to do so, the A.O.(TDS) had rightly treated the assessee an 'assessee in default' u/s. 201(1) of the Act.*

> ***9.*** *The assessee had relied on various case laws for the proposition that its estimate is bona fide and it cannot be held to be an 'assessee in default' u/s. 201(1) of the Act. This contention of the assessee is without legal basis, since the assessee had made no effort to prove how its belief was formed that such foreign travel expenses would come within the ambit of sec. 10(5) of the I.T. Act. Taking into account all the facts and circumstances of the issue as deliberated upon in the fore-going paragraphs and also in conformity with the judicial views (supra), we are of the view that the authorities below were justified in their stand which requires no interference of this Bench. It is ordered accordingly.*

5. The identical issue has come before the ITAT, Bangalore Bench in assessee's own case in ITA No.1578 to 1581/Bang/2017 dated 29.11.2019 and the coordinate bench following it's own order in the case of Syndicae Bank dismissed the appeal of the assessee. During the appeal hearing, the ld. AR fairly conceded that the facts are identical. Since, the facts are identical and the ld. CIT(A) followed the order of this Tribunal, respectfully following the order of the coordinate bench in the case of Syndicate Bank (supra)we decline to interfere with the order of the ld. CIT(A) and the same is upheld.

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

Order pronounced in the open court on 04th December, 2019.

Sd/-	**Sd/-**
(N.V. VASUDEVAN)	**(D.S. SUNDER SINGH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Bengaluru, Dated: 04-12-2019
EDN

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore