

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
(Conducted through Virtual Court)
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

ITA No.2705/Ahd/2017

निर्धारण वर्ष/ Asstt.Year : 2012-13

| | | |
|---|-----|--------------------------------|
| Hareshkumar Ratilal Kansara 3, Prathmesh Apartment Opp: Dhananjay Tower Satellite Ahmedabad 380 015. PAN : ABDPK 0268 Q | Vs. | ITO, Ward-4(2)(2) Vadodara. |
|---|-----|--------------------------------|

| | | |
|--------------------|--|--------------------|
| (Applicant) | | (Responent) |
|--------------------|--|--------------------|

| | |
|---------------|-------------------------|
| Assessee by : | Shri Pritesh Shah, CA |
| Revenue by : | Shri S.S. Shukla, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 27/05/2021

घोषणा की तारीख /Date of Pronouncement: 15/06/2021

आदेश/ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-4, Vadodara dated 8.9.2017 passed for the Asstt.Year 20012-13.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming disallowance of leave travel concession amounting to Rs.2,94,594/- claimed under section 10(5) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee at the relevant time was working with State Bank of India. As per form no.16 issued by the employer, the assessee was having income from salary and income from other sources. The assessee has filed his

return of income for the year under consideration declaring total income at Rs.10,65,370/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee on 29.10.2015. During the scrutiny assessment, it was noticed by the AO that the assessee has availed LTC for travelling to places in India as well as travelling to certain foreign countries and has claimed exemption under section 10(5) of the Act for the reimbursement of entire claim of LTC. The ld.AO further noticed that since journey undertaken by the assessee included foreign travelling also, therefore, provisions of section 10(5) of the Act was not applicable to the assessee, and therefore, he could not claim the exemption. The ld.AO sought explanation from the assessee as to why the same be not disallowed. However, the assessee could not submit satisfactory explanation to the AO. The ld.AO accordingly disallowed the claim of the assessee by holding that conditions enumerated in section 10(5) did not allow assessee to claim exemption where the LTC amount has been spent on foreign travel at foreign destination outside India. The ld.AO added the amount of Rs.2,94,594/- to the total income of the assessee. Dissatisfied with the action of the ld.AO, the assessee went in appeal before the ld.first appellate authority, who after going through the provisions of section 10(5) of the Act confirmed by the order of the AO. Still aggrieved, the assessee is now before the Tribunal.

4. Before me, the Id.counsel for the assessee filed written submissions. In the written submissions, the assessee *inter alia* pleaded that the assessee was under *bona fide* belief that LTC spent for travelling both in India and foreign countries were deductible expenses under the Income Tax Act, and therefore the same was not liable to be taxed. For claiming the exemption, the assessee was required to be submitted the detailed break-up of LTC travel expenses. When the assessee sought such details from his employer, State Bank of India, the same could not be made available to the assessee, due to administrative reasons, viz. shifting and merging of various departments of the bank, the records and details were not readily available to the assessee, and therefore, the same could not be submitted before the AO in time. Now after vigorous follow up by the assessee, SBI traced the details of LTC, and gave the details of break-up/bifurcation of total travelling expenses into Indian Travel and foreign travel on 01.8.2017. The assessee has placed on record, the copy of certificate in the form of additional evidence issued by the State Bank of India dated 21.12.2020 giving the details of break-up/bifurcation of LTC amount into foreign and domestic. Before me, the assessee is seeking admission of additional evidence, which could not be placed before the Revenue authorities due to the reasons stated above. It is accordingly prayed that additional

evidence may be taken on record and the claim of the assessee be allowed.

5. On the other hand, the Id.DR supported the orders of the Revenue authorities. He further submitted that the provisions of section 10(5) of the Act is very clear in this behalf that no exemption is available for the amount spent on foreign travel journey out of LTC, and therefore, there is no merit in the claim of the assessee.

6. On due consideration of the facts and circumstances, and on perusal of the material available on record, I find that the assessee has availed LTC, which he spent on travelling both in India and abroad, which the assessee has not denied. The case of the assessee is that the assessee is entitled for exemption under section 10(5) of the Act atleast for the portion of the LTC amount spent on traveling in India. However, he could not furnish the details of break-up of the same due to some administrative constrains explained in his written submissions. The Id.counsel for the assessee drew my attention towards page no.48 of the paper book, containing a certificate from the State Bank of India dated 21.12.2020 wherein the Bank has given bifurcation of total amount of LTC given to the assessee, as Rs.1,44,762/- towards foreign travel, and Rs.2,3,735/- towards domestic travelling. This detail was not with the assessee at the time of assessment, and could not be furnished when called for. Since, the same is now

made available to the assessee by the Bank, the same is sought to be taken on record as additional evidence, and based on which, the claim of the assessee is to be allowed. I am of the view that since this detail was not made available to the AO at the time of assessment, and the AO has no occasion to consider the same, therefore in the interest of justice, I restore the issue back to the file of the Id.AO to consider allowability or otherwise of claim of the assessee in accordance with provisions of section 10(5) of the Act in light of the additional evidence filed by the assessee in the form of certificate dated 21.12.2020 issued by the State Bank of India. I order accordingly.

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

Order pronounced in the Court on 15th June, 2021 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated 15/06/2021