

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.76/Lkw/2017  
Assessment Year:2013-14

State Bank of India, RBO-III, (Admin Office) Main Branch, Kanpur. TAN:KNPSO4068B	Vs.	Dy.C.I.T. (TDS), Kanpur.
(Appellant)		(Respondent)

I.T.A. No.22/Lkw/2017  
Assessment Year:2012-13

State Bank of India, Fund Settlement Link Office, Kanpur. TAN:KNPSO0810F	Vs.	Dy.C.I.T. (TDS), Kanpur.
(Appellant)		(Respondent)

I.T.A. No.304 & 305/Lkw/2017  
Assessment Year:2013-14 & 14-15

State Bank of India, Fund Settlement Link Office, Kanpur. TAN:KNPSO0810F	Vs.	Dy.C.I.T. (TDS), Kanpur.
(Appellant)		(Respondent)

Appellant by	Shri Pradeep Mehrotra, Advocate
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	07/04/2022
Date of pronouncement	27/04/2022

## **ORDER**

### **PER BENCH:**

These appeals have been filed by different assessees against separate orders of learned CIT(A) dated 09/11/2016, 24/10/2016, 09/02/2017 and 09/12/2017 respectively. Similar grounds have been taken in all the appeals and these were heard together therefore, for the sake of convenience a consolidated order is being passed. For the sake of completeness, the grounds taken in I.T.A. No.76/Lkw/2017 are reproduced below:

- "1. That the Ld. CIT Appeal has erred on facts and in law in holding that the order of the A.O. is in consonance with the bear provisions of law and justified.*
- 2. That the Ld. CIT Appeal has ignored the fact as submitted before the Id. CIT Appeal in respect of the liability for TDS in light of interim order passed in Writ Petition No. 11991/2014 Dated 16/02/15.*
- 3. That the Honorable Madras High Court have in its interim order clearly directed that "On and after 16/02/15 income tax should not be deducted on and after 16/02/15 on any amount paid or reimbursed to employee of the bank in respect of LFC/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 or after 16/02/15."*
- 4. That the Ld. CIT Appeal has erred on facts and in law in not considering the interim order of the Madras High Court while adjudicating the grounds of appeal before him.*
- 5. That the order of the Ld. CIT Appeal to the extent of not considering the order of the Madras High Court is arbitrary, illegal and bad in law."*

2. Learned counsel for the assessee, at the outset, submitted that the assessee is a nationalized bank and it had reimbursed the LTC to its employees. The Revenue has raised the demand against the assessee by

holding that the assessee had not deducted tax at source for the visits made by the employees to foreign countries. Learned counsel for the assessee submitted that during the proceedings before the learned CIT(A), it was brought to the notice of learned CIT(A) that vide interim order passed in Writ Petition No.11991 of 2014 dated 16/02/2015, Hon'ble Madras High Court had clearly directed that income tax should not be deducted on and after 16/02/2015 on any amount paid or reimbursed to employee of the bank in respect of LFC/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 or after 16/02/2015. Learned counsel for the assessee further relied on an order of Mumbai Tribunal wherein the Tribunal in I.T.A. No.1717/Mum/2019 vide order dated 27/01/2021 has held that the assessee employer is not in default for non deduction of tax on LTC provided to employees who travelled to Indian destinations but involving a foreign leg also. Therefore, it was prayed that the appeals filed by the assessee may be allowed.

3. Learned D. R., on the other hand, supported the orders of the authorities below.

4. We have heard the rival parties and have gone through the material placed on record. We find that the Assessing Officer has raised demand u/s 201 of the Act on various assesseees forming part of State Bank of India for not deducting TDS on LTC for visits by the employees to foreign countries. The Assessing Officer has held that the LTC u/s 10(5) is exempt if the expenditure is incurred in India and no foreign visit is made. We find that the I.T.A.T. Mumbai in I.T.A. No.1717/Mum/2019 vide order dated 27/01/2021, under similar circumstances, has allowed relief to the assessee

and has cancelled the demand raised u/s 201(1) read with section 192 of the Act. The findings of the Tribunal are reproduced below:

*"3. To adjudicate on this appeal and for the reasons we will set out in a short while, only a very few material facts need to be taken note of. The assessee before us is a branch office of a public sector bank, hereinafter referred to as 'the assessee employer'. On 7th January 2014, this branch office was subjected to survey proceedings under section 133A. During the course of this survey, it was found that certain employees have claimed LFC (i.e., Leave Travel Concession) facility, wherein "travel to places outside India was involved". It was noted that some of the employees, in these LFC claims, have taken a very circuitous route, involving travel abroad to one or more domestic destinations. It was in this backdrop that the matter was examined further by the Assessing Officer. He noted that the admissible leave travel concession in these cases was treated as tax-exempt under section 10(5), and estimated tax liability was computed without taking into account the admissible leave concession facility in such cases. The Assessing Officer was, however, of the view that exemption under section 10(5) was not available in such cases as "if the employee travels out of India, the LFC amount cannot be claimed as exempt under section 10(5)", and, to that extent, the assessee was in error in not deducting tax at source in respect of such payment of the LFC facility. The Assessing Officer also noted that "the employees travelled to the Indian destinations not by direct and shortest route but by circuitous route including foreign journey". It was in this backdrop that the Assessing Officer held that the LFC payment should have been included in the income of the employee concerned while deducting tax at source from the salaries, and the Assessing Officer also held that the assessee is required to be treated as an assessee in default for not deducting the related tax at source. Aggrieved, the assessee carried the matter in appeal before the CIT(A). In a very detailed statement of facts filed before the learned CIT(A), the assessee, inter alia, explained as follows:*

*9. The provisions of LTC are governed by the industry level settlement viz. 'joint Notes', signed by the Indian Banks' Association [ISA] on behalf of the member banks and the representatives of Officers' Organisations after industry level settlement.*

10. *Administrative and operating guidelines, issued by the Bank, are based on the clarifications issued by the Indian Banks' Association i.e. IBA letter Nos. PLI/Set/25 dated 18 September 1982 and CIR/HR&R/2012-13/665/F/6245 dated 12 July 2012.*

11. *So long as the employee's designated place is anywhere in India and he actually visits the place as designated, reimbursement may be made to him for his entire journey by the circuitous route provided 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.*

12. *The Bank reimburses the LTC claim made by the employees only where the employee's designated place is anywhere in India and he actually visits the place as designated. In case an employee travels outside India during the course of his visit to a place in India, reimbursement is made to him for his entire journey by the circuitous route provided 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. The bank has issued Circular No. ADM/037239 dated 20 August 1981 in this regard.*

13. *An employee undertaking journey under LTC is eligible for reimbursement of travelling expenses i.e. air / rail / steamer / road fare by the entitled class for the permissible distance, or the actual cost of travelling for the entire journey, whichever is lower. Further, only travel expenses are reimbursable and other facilities, if any, provided by travel agents are not reimbursable. The Bank has issued Circular No. CDO/P&HRD-PM/41/2013-14 dated 29 October 2013 in this regard.*

14. *For example, where there is a single itinerary for India and overseas travel is also involved, say, Mumbai-Kolkata-Singapore-Mumbai, and where the designated place in India is Kolkata, the economy class fare by national carrier for journey within India (i.e. Mumbai-Kolkata and Kolkata-Mumbai) is considered as exempt for the purpose of section 10(5) by the Bank, within the monetary ceiling to which the employee is eligible.*

15. *It is submitted that the Bank's framework for provision of LTC benefit to employees and the administrative and operating guidelines issued by the IBA are framed taking into account the provisions of the Income-tax Act, 1961 and the Income-tax Rules, 1962.*

*Benefit granted by Bank only for travel to a place in India*

*Section 10(5) requires that the exemption is available for proceeding on leave to any place in India. In this connection, the Bank has granted the benefit of exemption under section 10(5) to the employees only in cases where the designated place of travel of the employee has been a place in India.*

*In other words, the Bank in no case has granted the benefit of exemption under section 10(5) to employees where the designated place of travel is outside India. Similarly, the benefit is granted only when the employee actually visits the designated place in India.*

*No bar on travel outside India if designated place is in India*

19. *Section 10(5) does not place a bar on travel to a foreign destination during the course of travel to a place in India. Similarly, detailed guidelines have been framed for the purpose of grant of exemption in terms of rule 2B - these guidelines do not restrict overseas travel while proceeding on leave to a place in India.*

20. *In other words, if the intention of the legislature or the Central Board of Direct Taxes was to not allow exemption under section 10(5) in case a foreign leg was involved in the journey, it would have explicitly provided so.*

*Travel by shortest route*

21. *Rule 2B(1) of the Income-tax Rules, 1962 which deals with LTC are reproduced below for ready reference.*

*"(1) The amount exempted under clause (5) of section 10 in respect of the value of travel concession or assistance received by or due to the individual from his employer or*

*former employer for himself and his family, in connection with his proceeding,—*

- (a) on leave to anyplace in India;*
- (b) to any place in India after retirement from service or after the termination of his service,*

*shall be the amount actually incurred on the performance of such travel subject to the following conditions, namely:—*

- (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;*
- (ii) where places of origin of journey and destination are connected by rail and the journey is performed on or after the 1st day of October, 1997, by any mode of transport other than by air, an amount not exceeding the air-conditioned first class rail fare by the shortest route to the place of destination; and*
- (iii) where the places of origin of journey and destination or part thereof are not connected by rail and the journey is performed on or after the 1st day of October, 1997, between such places, the amount eligible for exemption shall be:—*

*(A) where a recognised public transport system exists, an amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination; and*

*(B) where no recognised public transport system exists, an amount equivalent to the air-conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail "*

*22. At various places in the rules, as highlighted above, there is a reference to the fact that the benefit of exemption under section 10(5) is restricted to expenditure by the shortest route*

*from the place of origin to the destination. This clearly means that rule 2B envisages that a person can travel by a circuitous route to the designated place in India.*

*23. In other words, rule 2B supports the stand that an employee can travel to various/ places during the course of his travel to his ultimate destination in India. As discussed earlier, there is no requirement that such places travelled should be within India i.e. they can be outside India as well.*

*24. The annual Circular on TDS from salaries for financial year 2013-14 (CBDT Circular No. 8/2013 dated 10 October 2013) clarifies that where the journey is performed in a circuitous route, the exemption is limited to what is admissible by the shortest route. Likewise, where the journey is performed in a circular form touching different places, the exemption is limited to what is admissible for the journey from the place of origin to the farthest point reached in India, by the shortest route. This also appears to indicate that circuitous travel involving a foreign destination is permissible.*

*All conditions of section 10(5) and rule 2B are satisfied*

*25. It may be noted that even in cases where the employee travels outside India during the course of his travel to a place in India, the exemption under section 10(5) is restricted for travel within India. In other words, where the designated place in India is Kolkata and the travel itinerary is Mumbai-Kolkata-Singapore-Kolkata, Mumbai, exemption is granted only for travel between Mumbai and Kolkata.*

*26. In terms of the requirements of rule 2B, the following other conditions are also satisfied:*

- The exemption is granted only for travel by economy class.*
- The air fare of the national carrier i.e. Air India is considered for the purpose of granting exemption.*
- The exemption is restricted to the actual amount incurred by the employee.*

### *Summary*

27. *To sum up, the submissions of the branch in relation to grant of exemption under section 10(5) read with rule 2B are as under:*

- *The Bank provides the LTC exemption only where the employee's designated place is in India and he actually visits the place as designated.*
- *There is no bar under section 10(5) or rule 2B on travel outside India if designated place is in India.*
- *Rule 2B refers to grant of exemption for travel by the shortest route and envisages that a person can travel by a circuitous route to the designated place in India.*
- *Even in cases where the employee travels outside India during the course of his travel to a place in India, the exemption under section 10(5) is restricted for travel within India*
- *The conditions of travel by economy class, air fare of the national carrier, restriction of exemption to the amount actually incurred, etc. are also complied with.*

28. *In other words, where the employee has designated a place of travel in India and travels to such a place in India, the benefit of exemption under section 10(5) cannot be denied merely on the ground that a foreign leg is also involved.*

29. *In view of the above, the Bank is of the view that it has correctly granted exemption under section 10(5) to its employees at the time of deduction of tax at source.*

### *BONA FIDE BELIEF*

30. *Without prejudice to the position that the branch has correctly granted exemption under section 10(5) to its employees at the time of deduction of tax at source, it is submitted that the branch is under a bona fide belief that even where the journey undertaken by an employee involves a foreign leg, the employee is entitled to exemption under section 10(5) when the employee's designated place is in India and he actually visits the place as designated.*

31. *The branch view is based on, inter alia, the following:*

- *The Bank's framework for provision of LTC benefit to employees and the administrative and operating guidelines issued by the IBA are framed taking into account the provisions of the Income-tax Act, 1961 and the Income-tax Rules, 1962.*
- *The provisions of LTC are governed by the industry level settlement viz. 'joint Notes', signed by the IBA and the representatives of Officers' Organisations after industry level settlement.*
- *This is the normal industry practice that has been followed by all public sector banks for several years and it has not been challenged till date.*
- *It may be noted that in around approximately 20-25% of the cases of LTC, a foreign leg is involved. In other words, in around 75-80% of cases, there is no foreign leg involved.*
- *From a legal perspective as well, as explained above, the Bank is of the view that exemption under section 10(5) cannot be denied to employees of a foreign leg is involved as long as the designated place of journey is in India.*

*32. Section 192(1) of the Income-tax Act, 1961 provides that any person responsible for paying any income chargeable as salaries shall at the time of payment, deduct income tax at the rates in force on the estimated income of the assessee.*

*33. The Bank had honestly and fairly formed an opinion and arrived at the estimated income of the employees. As discussed above, the Bank was under the bonafide belief that LTC claim for travel within India cannot be denied just because the journey also includes visit outside India.*

*34. Accordingly, without prejudice to the position adopted by the Bank that the Bank has correctly granted exemption under section 10(5) to its employees at the time of deduction of tax at source, it is submitted that in the present circumstances and facts of the case, the Bank cannot be treated as an assessee in default in terms of section 201.*

*35. There are a large number of decisions of various Courts, wherein it has been held that where the employer makes a bona fide estimate of the income of the employee and deducts*

*tax at source thereon, he cannot be held to be an assessee in default under section 201.*

*36. In this regard, the Bank relies on, inter alia, the following judicial precedents:*

- Gwalior Rayon Silk Co. Ltd. v. CIT (140 ITR 832) (Madhya Pradesh High Court)*
- CIT v. Nestle India Ltd. (243 ITR 435) (Delhi High Court)*
- CIT v. HCL Info System Ltd. (282 ITR 263) (Delhi High Court)*
- LIC of India v. ACIT (Writ Tax No. 619 to 621 of 2009) (Allahabad High Court)*
- CIT v. Oil & Natural Gas Corporation Ltd. (254 ITR 121) (Gujarat High Court)*
- CIT v. I.T.C. Ltd. (220 Taxman 414) (Allahabad High Court)*
- Lintas India Ltd. v. ACIT (5 SOT 310) (Mumbai ITAT)*

*37. The Bank also places reliance on the following judicial precedents which have upheld that where the employer has made a bona fide estimate regarding deduction of tax at source, it cannot be regarded as an assessee in default in terms of section 201:*

- HCL Info System Ltd (95 TTJ 109) (Delhi ITAT)*
- Associated Cements Co. Ltd. (74ITD 369) (Mumbai ITAT).*
- Mahindra & Mahindra (ITA No. 9869 to 9871 /Bom/69) (Mumbai ITAT).*
- CIT v. Nestle India Ltd. (61 ITD 444) (Delhi ITAT)*
- G.D. Goenka Public School (117 ITD 101) (Delhi ITAT)*
- Indian Airlines Ltd. (59 ITD 353) (Mumbai ITAT).*
- Eicher Goodearth Ltd. (ITA 1305/Del/1991) (Delhi ITAT).*
- KLM Royal Dutch Airlines (62 TTJ 268) (Delhi ITAT).*

*38. It is reiterated that it was the bonafide belief of the Bank that it was not liable to deduct tax at source in respect of LTC provided to employees. In other words, the Bank had deducted appropriate tax at source on the basis of the prevalent law and there was no default on the part of the Bank in deducting tax at source.*

*Accordingly, the Bank cannot be held to be an assessee in default within the meaning of section 201.*

*Exemption for Indian leg*

*39. Without prejudice to the above, the branch submits that if at all the LTC payments involving a foreign leg are to be held as taxable, the employee is entitled for exemption under section 10(5) to the extent of expenses incurred for travel in India where the employee's designated place is in India and he actually visits the place as designated.*

*4. Learned CIT(A) was, however, far from impressed from the facts so set out and the arguments advanced before him. He rejected the submissions made by the assessee and concluded as follows:*

*I have gone through the AO's order and the appellant contention in detail. All these grounds primarily relates to the benefit of leave travel concession granted by the assessee bank to its employees and non-deduction of TDS on the payment of leave travel concession by the assessee to its employees and the corresponding interest thereon. The brief facts of the case are that the AO observed that the appellant had not deducted TDS on the amount of reimbursement of Leave Travel Concession (LTC)/Leave Fare Concession (LFC) given to the employees even in the cases where a foreign destination was included in the itinerary of their journey. Section 10(5) of the Income Tax Act, 1961 clearly stipulates that exemption under section 10(5) of the Act is available only for travel to any place in India and restricted to the amount of expenses actually incurred for the purpose of such travel read with conditions as per rule 2B of the Income Tax Rule, 1962. In this regard, ITAT Bench Jaipur has recently passed a very exhaustive order on March 28, 2017 which is reported in 81 Taxmann.com 192 (Jaipur Tribunal). Since it is a very detailed order, the operative part is reproduced below as it will cover the entire gamut of issues:-*

*"9. We have heard the rival submissions and perused the material available on record. The facts of the case are pari-materia with the decision of the Coordinate Bench in*

*case of SBI vs ACIT, TDS, Kanpur (supra) wherein the relevant findings are 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, 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 ITA No. 145 & 146/JP/17 and S.A. No.04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur (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. 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 i 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 IT A No. 145 & 146/JP/17 and S.A. No.04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur 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 I 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 Id. CIT(A) has directed the Assessing IT A No. 145 & 146/JP/17 and S.A. No. 04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur Officer to recalculate the liability of TDS at 10%. We, therefore, find no infirmity in the order of the Id. CIT(A) and we confirm the same."*

*10. Similarly, the decision of the Coordinate Bench in case of Om Prakash Gupta vs ITO(supra) also supports the case of the Revenue wherein the Coordinate Bench has held 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 condition for allowing exemption under section 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 ITA No. 145 & 146/JP/17 and S.A. No.04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur claiming exemption in relations to the travel concession received by an employee from his employer or former employer, for proceeding on leave to anyplace In India, The person is to undertake the journey to anyplace in India and thereafter return to the place of employment 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 fair of the National Carrier by the shortest route to the destination in India. The said condition in no way provides that the assessed 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, which has been reproduced by us in the paras hereinabove. In view thereof, we reject the claim of the assessee of exemption under section 10(5) of the Act. The ground of appeal No. 3 raised by the assessee is thus dismissed." 11. No contrary authority has been brought to the notice of the Bench. We, therefore, do not see any reason to deviate from*

*the said view taken by the Coordinate Benches. In the result, the grounds no. 1-6 of the assessee's appeal are dismissed. 10. Regarding ground no. 7, it is noted that the Id CIT(A) has already held that flat rate of 30% applied by AO in each case for computation of TDS ITA No. 145 & 146/JP/17 and S.A. No.04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur liability is not in accordance with the provisions of section 792 and the AO has been directed to compute TDS in case of each employee according to the tax slab in which each employee falls. This ground is thus infructuous and is hereby dismissed. 11. Regarding ground no. 8, the Id CIT(A) has already the AO to compute interest u/s 201(1 A) with reference to the actual date of payment of LTC in each case. This ground is thus infructuous and is hereby dismissed.*

*12. In the result, we confirm the findings of the Id CIT(A) and the appeal of the assessee is dismissed.*

*ITA No. 146/JP/17 The facts of the case are pari-materia with the facts as noted in ITA No. 145/JP/17 and our findings contained therein shall mutatis mutandis in this appeal as well. In the result, the appeal of the assessee is dismissed. S.A. No. 04 & 05/JP/2017 In terms of quantum of tax demand raised in both the years under considerations, we direct the AO to give effect to the directions as contained In the Ld CIT(A) order, if its not done already, regarding applying the correct rate of tax for determining the TDS liability as well as the period for which interest is payable on such TDS liability and recompute the tax and interest demand for both the years] under consideration and serve the revised demand ITA No. 145 & 146/JP/17 and S.A. No.04 & 05/JP/2017 State Bank of India, Jaipur Vs. ACIT, TDS, Jaipur notice to the assessee for both the years under consideration. In the interim, no coercive steps shall be undertaken by the Department. With*

*above directions, the stay petitions are disposed off.*

*In the result the appeals filed by the assesses for the both the years are dismissed and the stay petitions are disposed off with above directions.*

*In this decision, the decisions of State Bank of India, Kanpur vs. ACIT in ITA No.138 to 140/LKW/2015 dated 04-03-2016 of ITAT, Lucknow Bench and Shri Om Prakash Mehta Vs. ITO in ITA no. 938/Chandigarh/2011 dt. 29.04.2013 was extensively quoted as the subject matter was the same. In nutshell the finding of all the three ITAT rulings are as follows;-*

- a) Foreign travel- as per the provision of the rules exemption is not allowed in case of travel abroad.*
- b) The exemption is limited to the actual expenses. ,*
- c) Where the journey is performed in a circuitous route, the exemption is limited to what is admissible by the shortest route likewise where in the journey is performed in a circular form touching different places, the exemption is limited to what is admissible for the journey from the place of origin to the farthest point reached in India by the shortest route.*
- d) Obligation of the employer- The employer has to satisfy the obligation that LTC/FTC is not taxable in view of section 10(5), the employer is not only required to be satisfied about the ingredients of the said clause but also to keep and preserved evidence in support thereof.*

*The relevant provisions on this issue are section 10(5) read with Rule 2B on which the above rulings have been based. Further the Circular No. 8/2012 [F.NO. 275/192/2012-IT(B)], dated 5-10-2012 of CBDT which is a guidance Note for calculating INCOME-TAX DEDUCTION FROM SALARIES UNDER SECTION 192 is also relevant for giving this claim. After considering the entire material and respectfully following the above three judgments of ITAT, Lucknow Bench, /ITAT- Jaipur Bench and ITAT Chandigarh Bench, it is held that there is no exemption available u/s 10(5) in case of travel outside India, and consequently the appellant's petition is dismissed on this issue. In the light of above legal and factual details the amount of Rs. 3,09,576/- paid to the employees by the bank (where the journey has been taken outside India) is to be considered as the amount for which the bank is to be treated as deemed defaulter as per provisions of section*

*201(1). This amount is confirmed. The interest u/s 201(1A) determined by the TDS AO is also being confirmed.*

*5. The assessee is not satisfied and is in further appeal before us.*

*6. None appeared for the assessee, but, on careful consideration of all the related factors, including smallness of the amount involved and the fact that the issue in the appeal is a neatly identified legal issue in the case of a public sector undertaking assessee, we have deemed it fit and proper to dispose of the matter ex-parte qua the assessee on the basis of material on record and in the light of the submissions of the learned Departmental Representative. We, accordingly, proceed to take up the appeal for adjudication on merits. We have heard the learned Departmental Representative, perused the material on record, and duly considered facts of the case in the light of the applicable legal position.*

*7. As we proceed to adjudicate on connection of the impugned demands, it is important to bear in mind while dealing with the demands relating to a tax deduction of at source from payments of salaries that there is a subtle line of demarcation between what is taxable in the hands of the assessee and what is the amount of estimated income in respect of which tax is required to be deducted at source by the employer. Section 192 (1), which imposes tax withholding obligations on the employers in respect of payments for salaries, requires that tax deduction is made by the employer "on the estimated income of the assessee under this head (i.e., income from salaries) for that financial year". Thus, the tax withholding obligation is clearly in respect of "estimated income of the assessee" and not in respect of "taxable income of the assessee". The mere fact of taxability of a payment is not in respect of "taxable income in the hands of an assessee under this head". Clearly, therefore, taxability of an income, in the hands of the employee concerned, under the head 'income from salaries' per se is thus not sufficient to invoke the tax withholding obligations of the employer. There can be situations in which the employer genuinely and reasonably estimates income of the employees under the head salaries, and yet actual taxability of income under the head salaries of the related employees may be higher than employer's estimation. Therefore, while examining the question as to whether the employer has properly discharged his duties under section 192, all that is to be seen is whether the employer has reasonably, or bonafide, estimated the income of the employees and deducted tax in respect of such estimated income. As long as the*

*conduct of the employer in this exercise is bonafide, he cannot be said to be wanting in his conduct under section 192. Explaining this legal position, in the oft-quoted landmark judgment in the case of CIT Vs Gwalior Rayon & Silk Mills Ltd [(1983) 140 ITR 832 (MP)], Hon'ble Madhya Pradesh High Court judgment has, inter alia, observed that, "A duty is cast on an employer to form an opinion about the tax liability of his employee in respect of the salary income. While forming this opinion, the employer is undoubtedly expected to act honestly and fairly. But if it is found that the estimate made by the employer is incorrect, this fact alone, without anything more, would not inevitably lead to the inference that the employer has not acted honestly and fairly. Unless that inference can be reasonably raised against an employer, no fault can be found with him. It cannot be held that he has not deducted tax on the estimated income of the employee". We humbly bow to the law so laid down by Their Lordships, and this, in our humble understanding, the correct and applicable legal position consistently followed by several coordinate benches of this Tribunal. There is not even a whisper of dissent on this point. It is in this light that we have, therefore, proceed further. The question that we need to, therefore, address is whether the action of the employer in not deducting tax at source from the leave travel facility in question could be said to be reasonable or bonafide. Let us, in this backdrop, take a look at the related legal provisions under section 10(5) read with rule 2.*

*B: Section 10(5)- exemption in respect of leave travel concession*

*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;*

*Provided that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel*

*(remaining statutory provision not reproduced as it is not considered to be relevant for the present discussion)*

*Conditions for the purpose of section 10(5) as prescribed under rule 2 B of the Income Tax Rules, 1962*

*2B. (1) The amount exempted under clause (5) of section 10 in respect of the value of travel concession or assistance received by or due to the individual from his employer or former employer for himself and his family, in connection with his proceeding—*

*(a) on leave to any place in India*

*(b) to any place in India after retirement from service or after the termination of his service, shall be the amount actually incurred on the performance of such travel subject to the following conditions, namely:—*

*(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;*

*(ii) where places of origin of journey and destination are connected by rail and the journey is performed on or after the 1st day of October, 1997, by any mode of transport other than by air, an amount not exceeding the airconditioned first class rail fare by the shortest route to the place of destination; and*

*(iii) where the places of origin of journey and destination or part thereof are not connected by rail and the journey is performed on or after the 1st day of October, 1997, between such places, the amount eligible for exemption shall be:—*

*(A) where a recognised public transport system exists, an amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination; and (B) where no recognised public transport system exists, an amount equivalent to the air-*

*conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail.*

*(remaining statutory provision not reproduced as it is not considered to be relevant for the present discussion)*

*8. A plain reading of the above provisions does not indicate any requirement of taking the shortest route for travelling to "any place in India" or putting any kind of restrictions the route to be adopted for going to such a destination. Quite to the contrary, the statutory provisions do envisage the possibilities of someone taking a route other than the shortest route, as is implicit in the restriction that "an amount not exceeding the air economy fare of the national carrier by the shortest route to the place of destination" will only be eligible for exemption under section 10(5). What is essentially implied, to give a simple example, is that if someone is based in Mumbai and he decides to go to Delhi via, let us say, Lucknow, Kolkata, or Chennai, the amount admissible for exemption under section 10(5) will be restricted to the price of direct flights between Mumbai and Delhi on the national carrier. This proposition is not even disputed by the income tax department. The question, however, arises whether when the same person goes to Delhi, via Dubai, the exempt leave travel concession being restricted to the price of Mumbai Delhi direct flight. Of course, the stand of the income tax department is that even the cost of the direct flight from Mumbai to Delhi, on the national carrier- assuming that it is less than Mumbai-Dubai-Delhi airfare, will not be admissible leave travel assistance exemption in such a case. That is the approach approved by the coordinate benches as well, and, therefore, we need not question that at this stage. The relevant question, however, is not the actual status of taxation; the relevant question is whether the assessee employer could be said to be unreasonable or mala fide in proceeding on the basis that in such a situation also, the cost of a direct flight between Mumbai Delhi on national airlines will be available for exemption under section 10(5). When we look at the detailed statement of facts, extracts from which have been extensively reproduced by us earlier in this order, we do not find anything wrong or unreasonable in the conduct of the assessee employer. There is no specific bar in the law on the travel, eligible for exemption under section 10(5), involving a sector of overseas travel, and, in the absence of such a bar, the assessee employer cannot be faulted for not inferring such a bar. The reimbursement is restricted to airfare, on the national carrier, by the shortest route- as is the mandate of rule 2B. The employee has*

*actually travelled, as a part of that composite itinerary involving a foreign sector as well, to the destination in India. The guidance available to the assessee employer indicates that, in such a situation, the exemption under section 10(5) is available to the employee-though to the extent of farthest Indian destination by the shortest route, and that is what the assessee employer has allowed. In the light of this analysis of the legal position and the factual backdrop, whatever may be the position with respect of taxability of such a leave travel concession in the hands of the employee, the assessee employer cannot be faulted for not deducting tax at source from the leave travel concession facility allowed by him to the employees. As we hold so, we may add that we have not really addressed ourselves to the larger question with respect to the actual taxability of this leave travel concession in the hands of the employees concerned, even though we have our prima facie reservations on the coordinate benches decisions holding taxability of these amounts in the hands of the employees concerned, because that aspect of the matter is not really relevant as on now. We leave it at that for the time being. The coordinate bench decisions deal with only the issue of taxability of leave travel facility under section 10(5) and not with the broader question about the nature of tax deduction at source liability under section 192, as also the issue about bonafides of the stand of the assessee employer. These decisions, therefore, do not come in the way of our present decision. Once we hold, as we do in this case, that estimation of income, in the hands of the employees under the head 'income from salaries', by the employer was bonafide and reasonable, the very foundation of impugned demands raised under section 201 r.w.s 192 ceases to hold good in law. We must, therefore, vacate these demands.*

*9. In view of the above discussions, as also bearing in mind entirety of the case, we cancel the impugned demands under section 201 r.w.s. 192 as unsustainable in law. Ground no 3 is thus allowed, and all the remaining grounds of appeal are dismissed as infructuous. The assessee gets the relief accordingly.*

*10. As we part with the matter, we have a couple of observations to make. The first observation is this. Mr. Khalsa, learned Departmental Representative, upon being explained the legal position during the course of hearing, did not have much to say and he graciously left the matter to us. His short point, however, was that the fact that whether entire travel costs are borne by the employer or whether only the partial costs, limited to direct flight on the shortest route and as per*

*the national carrier, are borne by the employer, is not unambiguous from the findings of the authorities below, and the matter should, at least for this verification, be restored to the file of the Assessing Officer. We see no merits in this plea. It has been a specific stand of the assessee all along that the leave travel facility extended by the assessee employer is restricted to the cost of direct flights, on the national carrier, by the shortest route taken, and that is reiterated in the statement of facts filed before the CIT(A) as well. This stand of the assessee remains uncontroverted. There is no reason to doubt the same and prolong the proceedings. In case the Assessing Officer finds that this relief is based on incorrect facts, its open to him to seek appropriate remedy by, inter alia, seeking a recall of this order, but, on our own and merely to double-check, we are not inclined to remit the matter to the file of the Assessing Officer. Inconvenience to the assessee and smallness of the amounts involved apart, this is a case of a public sector undertaking, and any unnecessary further prolonging of the proceedings can only at the cost of taxpayers' hard-earned monies. We must avoid that. The second point we must make is that we are alive to the fact that on materially identical facts, the coordinate benches have decided the matter against the assessee by holding that exemption under section 10(5) is not available to the employees on the facts of these cases. That does not, however, affect our conclusions, which are essentially based on our interpretation about the impact of section 192(1) so far as obligations of the assessee employer are concerned, and, in none of the cases cited before us, any findings are given about the malafides, or even lack of bonafides, on the part of the assessee employer. There is thus no conflict between our decision and the coordinate bench decisions in similarly placed cases; the path we have followed is different, and so are the conclusions we have arrived at. With the greatest respect to the coordinate benches, but without the slightest hesitation, we are of the view that the core issue in appeal remained unaddressed in these coordinate bench decisions, and, therefore, even though these coordinate benches decisions are in respect of similarly situated cases, these decisions do not bind us on the conclusions. Finally, we must place on record our deep appreciation for a very well-drafted statement of facts and the grounds of appeal, which, in the absence of any assistance during the course of hearing, were indeed of immense help to us.*

*11. In the result, the appeal is allowed in the terms indicated above."*

5. The assessee in the grounds of appeal has mentioned about the interim order of Hon'ble Madras High Court but during proceedings before us has not elaborated on this aspect and has rather filed a copy of Mumbai Tribunal in I.T.A. No.1717/Mum/2019, the findings of which we have already reproduced above. The learned CIT(A) has partly allowed appeals of the assesseees and has directed the Assessing Officer to calculate the tax deduction liability on the proportionate amount of package to employees attributable to foreign visits. However, learned CIT(A) has not commented on the judgment of Mumbai Tribunal in I.T.A. No.1717/Mum/2019. We, therefore, deem it appropriate to remit these issues back to the file of learned CIT(A) who should decide the issues afresh keeping in view the facts and in accordance with law.

6. In the result, all the appeals of the assesseees stand allowed for statistical purposes.

(Order pronounced in the open court on 27/04/2022)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:27/04/2022  
\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar