IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'G' : NEW DELHI)

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2615/Del/2019, A.Y. 2011-12

M/s. State Bank of India Personal Banking Branch 11, Sansad Marg, New Delhi-110001 PAN No. AAACS8577K TAN : DELS23348D	Vs.	ACIT, Circle-77(1), Laxmi Nagar, Delhi-110092
(APPELLANT)		**(RESPONDENT)**

ITA No.2616/Del/2019, A.Y. 2011-12

M/s. State Bank of India Main Branch, 5th Floor, 11, Sansad Marg, New Delhi-110001 PAN No. AAACS8577K TAN : DELS21188G	Vs.	ACIT, Circle-77(1), Laxmi Nagar, Delhi-110092
(APPELLANT)		**(RESPONDENT)**

Assessee by	Sh. Vivek Gupta, CA
Revenue by	Shri Abhishek Kumar, Sr. DR

Date of hearing:	28.07.2022
Date of Pronouncement:	3rd .08.2022

ORDER

PER ANUBHAV SHARMA, JM:

Two appeals have been filed by the two branches of the Assessee having common PAN and against order dated 28.01.2019 & 29.01.2019 in appeal no. 93/18-19/494/17-18 & 128/18-19/495/17-18 respectively in assessment year 2011-12 passed by Commissioner of Income Tax (Appeals)-31, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 05.03.2018 u/s 201(1) / 201(1A) of the Income Tax Act, 1961 passed by ACIT, Circle-77(1), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are a spot verification u/s 133A of the Act was conducted at the business premises of the appellant to examine as to whether the re-imbursement made under Leave Fare Concession ('LTD') scheme of the State Bank of India to employees who have carried out circuitous tour, covering foreign destination was considered as part of taxable income of those employees and to ascertain whether TDS u/s 192 of the Act was duly deducted on such reimbursements.

2.1 During the proceedings, it was noticed that many of the officials of SBI have availed LFC/LTC Scheme and carried out circuitous tour which includes foreign travel, before/after reaching the destination. According to the eligibility criteria, reimbursement was made to the extent of actual tour expenses and same were claimed, to be exempt as per the provisions of

expenses and same were claimed, to be exempt as per the provisions of Section 10(5) of the Act .

2.2 The Ld. AO observed that the wording and intention of the Section 10(5) and Rule 2B is explicit. The benefit of exemption under the said section is available only in case of proceeding on leave to any place in India and not for International Travel. Sh. Jagdish Chandra Joshi, AGM (Accounts and Administration) of SB1, Main Branch was asked to explain as to whether the element of reimbursement on circuitous journey was considered as a part of salary and due TDS u/s 192 of the Act was deducted thereon. It was admitted by the AGM that no tax u/s 192 of the Act was deducted on such reimbursement made under LFC/HTC Scheme. The bank vide letter 29/01/2018 filed chronological details of reimbursement made on account of LTC/LFC/HTC during the FY 2010-11. The bank treats HTC (Home Travel Concession) and LTC (Leave Travel Concession) alike and the term used is "LFC (leave fare Concession") It was also observed that some employees have also taken circuitous route visiting foreign places in the garb of HTC, which is usually meant for travelling to Horne Destination via shortest route.

2.3 Accordingly, notice u/s 201(1)/(1A) of the Act was issued on 29/01/2018 and bank was asked to show cause as to why the deductor bank should not be held as an assesses in default within the meaning of Section 201 (1)/(1A) of the Act for non-deduction of tax on such reimbursement made *to* its employees.

3. After taking the reply of assessee, the Ld. AO denied the benefit of Section 10(5) observing that the bank was bound to deduct tax u/s 192 of the Act. onsidering the reimbursements on the value of LTC as taxable in the

hands of his employees it was also observed that the benefit of exemption of tax on the value of LTC received by an employee shall be available to an employee only when the journey on leave is performed within India. The moment, an employee has performed his journey on leave outside India, irrespective of the fact that the said journey outside India is undertaken either directly from the originating place (head quarters) or from the designated place in reimbursement only to the extent of the travel to the designated place in accordance with the said Guidelines, the tax exemption benefit for the entire element of such reimbursement shall go out of the realm of the provisions of Section 10(5) of the Act since the employee has undertaken journey on leave outside India.

3.1 Ld. AO observed that *"the Rule 2B provides that the said provisions are applicable in connection with the proceeding on leave to any place in India and the assessee has interpreted the provisions to suit its own needs thereby defeating the purpose and intent of these provisions. The assessee has presented a Circular of Corporate Centre vide E-Circular No. CDO/P&HRD-PM/86/2014-15 dated 03.03.2015 and also made a reference to the interim order of the Hon'ble High Court of Madras dated 16.02.2015. It is noteworthy that the said Circular was passed consequent to the interim order whereas in this case the journey was performed by 42 no of employees in the FY 2010-11 and their bills were settled on various dated during the financial year; meaning that these bills were settled much before the interim order was passed. The assessee was under obligation to deduct TDS on the reimbursement of expenditure incurred by the employees on foreign travel. The assessee has thus intentionally did not deduct TDS on the re-imbursement of expenditure incurred by the employees on foreign travel.*

Further, the interim stay-granted by Hon'ble High Court of Madras does not case an binding obligation in Delhi jurisdiction."

4. The Ld. CIT(A) had dismissed the appeal with following observations:-

> *"4.1 All the grounds of appeal raised are pertaining to a demand of short deduction alongwith interest amounting to Rs. 3,04,774/- raised u/s 201(1)/201(1A). At the outset, the Ld. AR has argued that as per provisions of section 201(3), the order should have been passed within the period of two year from the end of relevant financial year i.e. 2010-11 and hence the order passed by the A.O. is barred by limitation of time. On perusal of the provisions of section 201(3), I find that the section has been amended w.e.f 01.10.2014 and from this date, order u/s 201 can be passed at any time before the expiry of seven years also from the end of financial year in which payment is made or credit is given. Since the payment for reimbursement of expenditure liable for TDS was made in F.Y. 2010-11, the seven years period expire on 31.03.2018. Thus, the order passed by the AO dated 05.03.2018 is within prescribed time limit. On the basis of decisions of Hon'ble Supreme Court in the case of DCIT Vs Oracle India Pvt Ltd (2016) 72 taxmann.com 138 (SC) and Vodafone Cellular Limited Vs DCIT (2018) 91 taxmann.com 466 (Pune - Trib), the Ld. AR also argued that for the year under consideration the earlier provision will be applicable. However on going through these decisions, it is noticed that in the case of Oracle India Pvt Ltd (Supra), order u/s 201(1)/201 (1A) for A.Y. 2008-09 was passed prior to amendment u/s 201(3) and similarly order in the case of Vodafone Cellular Ltd (Supra) was also passed prior to 01.10.2014. Since the provisions in section 201(3) are procedural in nature, the order passed by the AO after this date even for financial year 2010-11 has to be treated within the time prescribed. Hence I hold that the decisions relied upon by the Ld. AR are not applicable and grounds of appeal raised on this account are dismissed.*
>
> *4.2 On merits of charging of short deduction and interest u/s 201(1)/201(1A), 1 find that LFC for foreign component of*

travelling is not exempt u/s 10(5) and hence the tax was required to be deducted u/s 192 on the perquisite value of such LFC. Accordingly the action of AO on this account is confirmed raising a demand of Rs. 3,04,774/-. Thus, the grounds raised on merits are also dismissed."

5. The assessee is in appeal before the Tribunal raising following grounds :-

"1. That on the facts and circumstances of the case and provisions of the law, the order dated 05/03/2018 passed by the Ld AO u/s 201(1)/201 (1A) and confirmed by the Ld CIT(A), being beyond jurisdiction on account of expiry of limitation, is bad in law and needs to be quashed.

2. That without prejudice to ground no. 1 above and on the facts and circumstances of the case and provisions of the law, the Ld AO as well as Ld CIT(A) erred in raising/confirming the demand of Rs. 3,07,714/-(including interest of Rs. 1,44,015/-) by denying the exemption u/s 10(5) in respect of reimbursement of Leave Travel concession involving foreign leg through circuitous route where designated place is in India..

3. That without prejudice to ground no. 1 and 2 above and on the facts and circumstances of the case and provisions of the law, the Ld AO as well as Ld CIT(A) erred in treating the bank as an assessee in default on account of alleged non deduction of TDS on such reimbursement towards Leave Travel Concession.

4. That consequential to our Ground no. 1, 2 & 3 above, the learned AO and Ld. CIT(A) has erred in charging/ confirming interest u/s 201(1A) of Rs. 1,44,015/-.

5. That the appellants request be allowed to add, modify and delete any other ground (s) of appeal."

6. Heard and perused the record.

7. Primarily, the contention of Ld. Counsel for the assessee is that the order of assessment passed is beyond jurisdiction of the AO on account of being passed after prescribed period of limitation. It was submitted that the appellant was served notices u/s 201(1) in January, 2018 in connection with TDS proceedings pertaining to F.Y. 2010-11. It was submitted that Section 201(3) inserted vide Finance (No. 2) Act, 2009 with effect from 01.04.2010 provided limitation of 2 years from the end of Financial year in which TDS statement is filed and 4 years from the end of financial years where the statement had not been filed. It was submitted that assessee was regularly filing TDS statements and had filed TDS return for F.Y. 2010-11 by 15.05.2011 for the period for passing order u/s 201(3) for relevant F.Y. 2010-11 stands expired on 31.03.2014. It was submitted that this amendment with effect from 01.10.2014 is prospective in nature and reliance in this regard was placed on the judgment of Hon'ble Gujarat High Court in **Tata Teleservices vs. Union of India (2016) 66 Taxmann.com 157 (Gujarat)**. He relied judgment of Co-ordinate Bench in **HCL Technologies Ltd. vs. ACIT ITA No. 1723/Del./2017** order dated 15.07.2020 to contend that relying Hon'ble Gujarat High Court judgment the Tribunal has held that with effect from 01.04.2010 the time limit provided to pass orders u/s 201(1) was two years from the end of financial year in which statement of TDS is filed.

7.1 On merits, Ld. Counsel submitted that the issue with regard to deduction of tax on reimbursement of LTC claims is pending before Hon'ble Supreme Court of India in SLP (C. no. 9876/ 2020) and that Hon'ble Delhi High Court judgment dated 13.01.2020 against the present assessee has been stayed. At the same time, he relied judgment of Hon'ble Mumbai Tribunal in

State Bank of India vs. ACIT ITA no. 1717/Mum./2019 order dated 27.01.2021 to contend that Mumbai Tribunal has held that the employer cannot be faulted for non-deducting tax at source from the Leave Travel Concession facility allowed by him to the employees for LFC claims by employees who have taken circuitous route involving travel abroad to one or more domestic destinations.

7.2 On the other hand, Ld. DR supported the findings of Ld. Tax Authorities below Ld. DR while tried to distinguish the facts of the case by contention that part two of section 201(3) of Act is applicable as it is a case of not filling return of TDS.

8. Appreciating the mater on record it can be observed that there is no dispute to the fact that for assessment year 2010-11 in ITA No. 2616/Del/2019 summons was issued on 20.01.2018 and notice u/s 201(1)/ 201(1A) of the Act were issued on 29.01.2018 while in case of ITA No. 2615/Del/2019 also the summons were issued on 20.01.2018 and notice was issued on 29.01.2018. The assessment orders u/s 201(1)/ 201(1A) of the Act have been passed on 05.03.2018. There is no doubt that Section 201(3) of the Act provides that the assessment orders under sub section 1 of Section 201 against assessee in default for failure to deduct the whole or any part of the tax from a person resident in India can be passed before expiry of two years from the end of financial year in which the payment is made. Judgment of Hon'ble Gujarat High Court in **Tata Teleservices vs. Union of India** (supra) relied by Ld. Counsel for appellant has held that Section 201(3) as amended by Finance Act (no. 2) of 2014 shall not be applicable retrospectively and for convenience relevant para 15 is reproduced as below:-

15. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201 (3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012. respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering the fact that wherever legislature wanted to give retrospective effect so specifically provided while amending section 201(3) (ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices / summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted."

9. Co-ordinate Bench at Delhi in the case of **HCL Technologies Ltd.** (supra) has also relied the Hon'ble Gujarat High Court judgment. The distinction attempted to be brought by Ld. Sr. DR by submitting that under the un-amended sub section 3 of Section 201 there were two clauses and first clause provided two years limitation was in case where statement of TDS were filed and there was limitation of six years where no such statement is filed and has no foundation because in the present case admittedly the statement was filed by the assessee and the question was only with regard to the issue if TDS was required to be deducted in cases involving payment of LTC reimbursements to employees who had taken circuitous routes

involving travel abroad to one or more domestic destinations. Thus, there is no doubt in the mind of Bench that the impugned order of assessment passed was without jurisdiction as the same was passed beyond the limitation period of two years and accordingly the ground no. 1 as raised stands allowed in favour of the assessee declaring assessment order to be *void ab initio* requiring no further determination of issues raised in remaining ground no. 2 to 5.

Consequently, the appeals are allowed and impugned assessment orders are set aside.

Order pronounced in the open court on 3rd August, 2022.

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 3 .08.2022
Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI