

**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.1261/Del/2020, A.Y. 2011-12

M/s. State Bank of India Administrative Office The Correntham Tower-A Office No. 111-112, 1 <sup>st</sup> Floor, Sector-62 Noida-201301 PAN: AAACS8577K TAN: MRTS 01660 B	Vs.	ACIT, TDS, Noida-UP
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.1262/Del/2020, A.Y. 2011-12

M/s. State Bank of India LCPC Branch, Sector-62, Noida AAACS8577K TAN :MRTS07061F	Vs.	ACIT, TDS, Noida-UP
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA No.1297/Del/2020, A.Y. 2011-12

M/s. State Bank of India Meerut Cantt Branch Meerut, UP-250001 PAN : AAACS8577K TAN : MRTS00173F	Vs.	ACIT, TDS, Noida-UP
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

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

Date of hearing:	04.08.2022
Date of Pronouncement:	16 <sup>th</sup> .08.2022

## **ORDER**

### **PER ANUBHAV SHARMA, JM:**

Three appeals have been filed by the different branches of the State Bank of India, having common PAN but different TAN and against order dated 07.02.2020 in ITA no 1261 & 05.02.2020 in ITA no 1262 and ITA no 1297 respectively for the assessment year 2011-12 passed by Commissioner of Income Tax (Appeals)-1, 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 31.03.2018 in ITA No. 1262 and assessment order dated 30.3.18 in ITA nos. 1261 and 1297, passed u/s 201(1) / 201(1A) of the Income Tax Act, 1961 passed by ACIT, TDS, Noida New Delhi (hereinafter referred to as the Assessing Officer 'AO'). As the raise common grounds so same are taken up together for adjudication.

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-imburement 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 Section 10(5) of the Act. The Ld. AO observed that the wording and intention of the Section 10(5) 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. Accordingly, notice u/s 201(1)/(1A) of the Act was issued and bank was asked to show cause as to why the deductor bank should not be held as an assessee 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 :-

*“As per provisions of section 10(5), 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. Section 10(5), read with rule 2B no way provides that assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of journey within India. Therefore, LTC/LFC paid by assessee to employees involving foreign travel as well would not qualify for exemption under section*

*10 (5) and, accordingly, the bank was liable to deduct TDS on such payments of LTC/LFC.*

*An important point to note is that the exemption is available for the amount incurred by the shortest route to the place of destination. If the travel is for a circuitous route, then the exemption will be available for the farthest destination through the shortest route.”*

4. The Ld. CIT(A) had dismissed the appeal. The assessee is in appeal before the Tribunal while raising grounds which are similar in the three appeals, except to the extent of figures/amounts. Accordingly for convenience the grounds from the **ITA no1262** are reproduced as below :-

*“1. That on the facts and circumstances of the case and provisions of the law, the order dated 31/3/2018 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. 4,11,754 (including interest of Rs 1,91,349/)) 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 giving second chance to the Ld. AO by directing him to ascertain whether taxes has been paid or not by recipient of income.*

*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. 1,91,349/-.*

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. 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 Relying a coordinate bench order dated 3/8/22 in ITA 2615 and 2616 it was submitted that issue is now covered in favour of assessee.

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. It was also submitted that present case cannot be said to be covered as CIT(A) has taken into consideration amended provisions on the basis of date of filing of statements.

8. Appreciating the mater on record, at the outset it can be appreciated that Ld CIT(A) has fallen in factual error in mentioning wrong dates of filing statement and thereby holding applicability of amended provisions. He considered the date of filing correctional statement to invoke the amended provisions which had come in to effect from 1/10/14.

8.1 Further, it can be observed that there is no dispute to the fact that in regard to present appellants, for assessment year 2010-11 summons were issued in January 2018 and the assessment orders u/s 201(1)/ 201(1A) of the Act have been passed on 30rd or 31st March 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. In SBI's

own cases for other branches vide order dated 3/8/22 in ITA 2615 and 2616, coordinate Bench to which one of us was in quoram, have also arrived at aforesaid conclusion.

10. 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.

11. 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 grounds.

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

**Order pronounced in the open court on 16<sup>th</sup> August, 2022.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:- 16<sup>th</sup> .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