

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DEHRADUN BENCH: DEHRAHUN**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &  
SHRI KUL BHARAT, JUDICIAL MEMBER**

**[THROUGH VIDEO CONFERENCING AT NEW DELHI]**

**ITA No.5018/Del/2018  
[Assessment Year : 2012-13]**

State Bank of India, 1-New Cantt. Road, Dehradun, Uttarakhand. <b>PAN-AAACS8577K</b>	vs	ITO (TDS), Dehradun.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Smt. Mayank Prabha Tomar, Sr.DR	
<b>Date of Hearing</b>	23.08.2022	
<b>Date of Pronouncement</b>	31.08.2022	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A), Dehradun dated 10.05.2018.

2. The assessee has raised following grounds of appeal:-

1. *“That on the facts and circumstances of the case & provisions of the law, the Ld CIT(A) has passed the order contrary to the direction of Hon’ble ITAT Delhi vide its order dated 07/11/2017. Therefore, the said order of Ld CIT (A) being without his jurisdiction and authority is liable to be quashed and the matter needs to be set aside to the Ld AO as per said order of Hon’ble ITAT Delhi.*
2. *That without prejudice to ground no 1 above and on the facts and circumstances of the case & provisions of the law, the Ld CIT (A) erred in confirming the denial of exemption u/s 10(5) in respect of reimbursement of Leave Travel concession involving foreign leg through circuitous route as long as the employees designated place is in India for his leave travel concession and he actually visits the place as designated.*

3. *That without prejudice to ground no 2 & 3 above, the Ld CIT(A) has also erred in confirming the action of the Ld AO treating the bank as an “assessee in default” for alleged non deduction of TDS on reimbursement towards Leave Travel Concession.*
4. *That the appellants request be allowed to add, modify and delete any other ground (s) of appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that there is no representation on behalf of the assessee on the last date of hearing as well. Therefore, the appeal of the assessee is taken up for hearing in the absence of the assessee and being disposed off on the basis of material available on record.

#### **FACTS OF THE CASE**

4. Facts giving rise to the present appeal are that this is second round of litigation and in the first round of litigation, the Tribunal in **ITA No.5782/Del/2015 [Assessment Year 2012-13]** vide order dated **07.11.2017** had set aside the issue for decision afresh. The contention of the assessee before Ld.CIT(A) was that the matter was restored to the Assessing Officer [“AO”]. Ld.CIT(A) rejected this plea of the assessee and also dismissed the appeal for want of prosecution.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. On the contrary, Ld. Sr. DR submitted that Ld.CIT(A) was justified for rejecting the plea of the assessee that the matter was restored to the file of the AO. However, in the entire order if it is to be read in totality, it would clearly demonstrate that intent of the Tribunal was to restore the issue before Ld.CIT(A) which is clear from the finding wherein the Tribunal has observed

that likewise the First Appellate Authority observed that due opportunity was provided to the assessee which was not availed in the right spirit for the reasons best known to the assessee. Without going into the deliberation, the Tribunal was of the view that no persons should be condemned unheard. Even otherwise, mandate of Article 265 of the Constitution of India is only due taxes has to be levied/collected. Thus, considering the totality of the facts, the Tribunal deemed it appropriate to remand the issue. However, erroneously it was stated to the file of the AO to adjudicate the appeal of the assessee afresh on merits. Therefore, it is clear that the appeal of the assessee was remanded back to Ld.CIT(A) but not to AO. Therefore, there is no infirmity into the order of Ld.CIT(A).

7. We have heard Ld. Sr. DR and perused the material available on record and gone through the orders of the authorities below. This is second round of litigation. In earlier round, the Tribunal had remanded the appeal by observing as under:-

*2.2. "On appeal, before the Ld.CIT(A), the stand taken in the assessment order was affirmed against which the assessee is in appeal before this Tribunal. If the observations made in the assessment order/impugned order are kept in juxtaposition and analyzed, we find that (as is evident from assessment order itself) the assessee provided the part details and on 24/03/2014, the assessee could not appear, therefore, the assessment was framed. Likewise, the Ld. First Appellate Authority observed that due opportunity was provided to the assessee, which was not availed in the right spirit for the reason based known to the assessee. Without going into much deliberation, we are of the view that no person should be condemned unheard. Even otherwise, mandate of Article-265 of the Constitution of India is only due taxes has to be levied/collected, Thus, considering the totality of facts, we deem it appropriate to send this file to the file of the Ld.*

*AO to adjudicate the appeal of the assessee afresh on merit. Needless to mention here that the assessee be provided due opportunity of being heard with further liberty to furnish necessary evidence, if any, to substantiate its claim. Resultantly, the appeal of the assessee is allowed for statistical purpose only.”*

8. Before Ld.CIT(A), the assessee had taken an objection that the matter was actually remanded back to the AO. Hence, the appeal was not maintainable before the Ld.CIT(A). The relevant finding of Ld.CIT(A) is reproduced as under:-

7. *“The representative of the assessee appeared on 11.04.2018 and sought adjournment till 03.05.2018. Thereafter, they began to raise the objection that the file has actually been remanded back to the AO and not to the undersigned and therefore, the proceedings of the undersigned are not in keeping with the directions of the Hon’ble ITAT. In this case it has been mentioned that the Hon’ble ITAT, considering the totality of facts, we deem it appropriate to send the file to the file of the id AO to adjudicate the appeal of the assessee afresh on merits, (emphasis supplied).*

8. *If it were the intention of the Hon’ble ITAT to send this matter back to the file of the Id. AO for fresh assessment, they would have used words like ‘denovo assessment’ or ‘fresh assessment’. They have clearly used the word, “send this file to the file of the Id AO to adjudicate the appeal.” It is common knowledge that the AO cannot adjudicate the appeal. The appeal must be adjudicated by the undersigned. It was explained to the representative of the assessee that the undersigned has a power co-terminous to that of the AO.*

9. *It was also explained that whatever details they would submit would be forwarded to the AO for remand report and his comments would be obtained. Therefore, the interest of justice and the comments of the AO would both be obtained/ me.*

10. *However, the assessee appears adamant and I find that in order to press this ant attitude, it has even misquoted the direction of Hon’ble ITAT.*

*In its letter dated 08.65.2018 it has stated that “the Hon’ble Income Tax Appellate Tribunal vide its order dated 07.11.2017 in ITA No. 5782/Del/2015 (A.Y. 2012-13) has directed in para 2.2 that the file of the assessee be send to the file of the ld. AO to adjudicate the matter afresh on merits.*

*11. I am afraid that the appellant has deliberately misquoted the directions of the Hon’ble ITAT by stating that it was sent to the file of the AO to adjudicate the matter afresh on merits whereas the directions of the ITAT was to adjudicate the appeal of the assessee afresh on merits.*

*12. Given the discussion above, I lead to the conclusion that the appellant is not desirous of pursuing this appeal for reasons best known to him. Under these circumstances, the assessee’s appeal is dismissed.”*

9. Before us, there is no representation on behalf of the assessee. It is also evident that none of the parties had moved an application for rectification of the order dated 07.11.2017 in ITA No.5782/Del/2015. Under these facts and circumstances of the present case, we restore the matter to the file of Ld.CIT(A) to decide on merit after obtaining Remand Report from the Assessing Authority. Thus, grounds raised by the assessee are allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31<sup>st</sup> August, 2022.

**Sd/-**

**(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI