

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 2609/Mum/2022 and 2726 to 2731/Mum/2022
(Assessment Years: 2013-14 and 2012-13 to 2017-18)

State Bank of India Corporate Centre 2 nd Floor, Office Administration Department, State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai-400 021	Vs.	CIT(A), NFAC Mumbai
PAN/GIR No. AAACS 8577 K		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Nitesh Joshi a/w Ninad Patade
Revenue by	:	Shri Paresh Deshpande
Date of Hearing	:	26.04.2023
Date of Pronouncement	:	28.04.2023

ORDER

Per Kavitha Rajagopal, J M:

The captioned appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2013-14, 2012-13 to 2017-18.

2. As the facts are identical in all these appeals, we hereby pass a consolidated order by taking ITA No. 2609/Mum/2022 as a lead case.

ITA No. 2609/Mum/2022

3. The assessee bank has challenged the order passed u/s. 201(1) r.w.s 201(1A) of the Act on various grounds passed by the Assessing Officer (A.O. for short) in the above mentioned assessment years. The assessee bank has also filed an additional ground in this

year stating that the order passed u/s. 201(1)/201(1A) of the Act is barred by limitation, as it was not passed within the reasonable time from the initiation of the proceedings by relying on the decision of the Special Bench of the Tribunal in the case of *Mahindra &Mahindra Ltd. vs. CIT* (30 SOT 374), which was subsequently affirmed by the Hon'ble Jurisdictional High Court in the case of *DIT(IT) vs. Mahindra and Mahindra Ltd.*[2014] 365 ITR 560 (Bom).

4. The brief facts of the case are that the A.O. observed that the assessee bank was allowing tax exemption on leave fare concession ('LFC' for short)/ leave travel concession ('LTC' for short) reimbursement where the employees have taken circuitous route in which foreign leg was included. It was also observed that the assessee has not included the LTC/LFC amount to the salary of the employees as perquisite and has also not deducted TDS on the reimbursed amount. The assessee has claimed the impugned amount as exemption u/s. 10(5) of the Act. The A.O. further observed that the exemption of the LFC was allowed only when the employee travels to place within India and the same was not exempt u/s.10(5) of the Act if the travel extend to place outside India though the end destination was within India. The A.O. vide show cause notice dated 07.03.2016 sought for details of list of employees who had undertaken foreign tour and had claimed leave travel concession during the impugned year and also in relation to default of non deduction of taxes from such LTC payments to the employees. The assessee in reply to this, submitted that the amount of Rs.3,86,58,836/- was paid to the employees as LFC which involved journey where the designated place was in India but included enroute travel undertaken by the employees to foreign countries. The assessee

further stated that the TDS was not deducted on the impugned amount as it was not taxable and that the same was exempted u/s.10(5) of the Act read with Rule 2B of the Rules. The assessee further stated that LTC was given only to designated place within India and that there was no bar u/s.10(5) of the Act or Rule 2B if the employee had travelled outside India when the ultimate destination was in India. The assessee further stated that as per Rule 2B, the employee should take the shortest route and permits to take a circuitous route to the designated place in India. It was also contended that the only condition for claiming LTC was that the employees were to travel by economy class, airfare of the national carrier and restriction of the exemption to the amount actually incurred. The assessee further stated that the exemption cannot be denied merely because there was a foreign leg involved in the travel. The assessee stated that in most of the cases there was no foreign leg involved and only around 20% to 25% cases of LTC there were foreign travel involved. The assessee contended that it was not under obligation to deduct tax at source u/s. 192 of the Act and the assessee was on a bonafide belief that it was not liable to deduct tax at source inspite of the LTC provided to employees even where foreign leg is involved. The assessee contended that it was not assessee in default as per the provision of section 201 of the Act. The A.O. held that section 10(5) benefit cannot be availed for LTC if the employee has travelled to foreign destination even if the ultimate destination was in India. The A.O. further held that though the ultimate destination was India, the employees were travelling to foreign countries in the guise of circuitous routes. The A.O. further held that the assessee cannot take advantage of bonafide belief when it was fully aware of the intention of its employees. The assessee's contention that it had arrived at the estimated income of the employees and has not

defaulted as per the provision of section 201 and 201(1A) of the Act was rejected by the A.O. on the ground that the assessee has overlooked its service rules approved by IBA which prohibits international leg for claiming LTC. The A.O. passed the order u/s. 201(1) and 201(1A) of the Act holding the assessee to be the assessee in default as per the provision of section 201(1) for non deduction and non deposit of TDS.

5. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A) who had confirmed the order of the A.O. by relying on the decision of the Hon'ble Karnataka High Court in the case of *SBI vs. ACIT (TDS)* vide order dated 17.12.2021 (128 taxmann.com 102) and also on the decision of the co-ordinate benches.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. During the appellate proceeding, the learned Authorised Representative (Id. AR for short) for the assessee relied on the additional ground raised by the assessee vide its submission dated 15.03.2023 for the reason that the impugned order was barred by limitation as the A.O. has failed to pass the order within a reasonable time to initiate the proceeding and had relied on the decision of the Special Bench of the Tribunal in the case of *Mahindra & Mahindra Ltd.* (supra) which was subsequently affirmed by the Hon'ble Jurisdictional High Court.

8. The Id. AR brought our attention to clause (20)(x) at pg. no.53 of the decision of the *Mahindra & Mahindra Ltd.* (supra) by the co-ordinate bench which held that the maximum time limit for passing the order u/s. 201(1) or 201(1A) of the Act will be the same as prescribed u/s. 153(2) of the Act which is one year from the end of the financial year in which proceedings u/s. 201(1) of the Act are initiated. The Id. AR further stated

that the A.O.'s order passed in the assessee's case is beyond the said period and that the impugned order was to be held as invalid being barred by limitation as per the decision of Hon'ble Jurisdictional High Court in the case of *Mahindra & Mahindra Ltd.* (supra).

9. The learned Departmental Representative (Id. DR for short) for the Revenue, on the other hand, vehemently opposed the contention of the Id. AR and controverted the said fact by stating that the decision in *Mahindra & Mahindra Ltd.* (supra) relied upon by the Id. AR does not apply in the present case as the said decision tantamount to cases prior to the amendment to section 201(3) of the Act vide Finance Act, 2012 which was w.e.f. 01.04.2010. The Id. DR contended that the additional ground raised by the assessee does not hold merit.

10. We have heard the rival submissions and perused the materials available on record. It is evident that the assessee has raised an additional ground holding that the impugned order dated 03.01.2019 was barred by limitation by relying on the decision of the Special Bench of the Tribunal in the case of *Mahindra & Mahindra Ltd.* (supra). It is observed that on similar facts, the Hon'ble Jurisdictional High Court has held that though section 201 of the Act has not prescribed any limitation period, declared the assessee to be an assessee in default, the Revenue will have to exercise the said powers within a 'reasonable time'. This as per our understanding clearly undertakes that it applies to cases prior to 01.04.2010. The assessee's case will not come under the purview of this decision. Hence, we do not find any merit in the additional ground raised by the assessee. Therefore, the additional ground raised by the assessee is dismissed.

11. The Id. AR for the assessee also relied on the original ground no.1 which states that the provision of section 201(3) of the Act which envisages that the order u/s. 201(1) of the Act cannot be passed after the expiry of two years from the end of the financial year in which TDS statement was filed. The Id. AR further contended that though this ground of appeal was raised before the Id. CIT(A), the same was not adjudicated by the first appellate authority. The Id. AR brought our attention to the order of the Id. CIT(A) wherein the said ground was raised and was not decided upon vide order dated 31.08.2022. The Id. DR had nothing to controvert the same.

12. We have heard the rival submissions and perused the materials available on record on this issue. It is observed that the assessee has raised this ground before the Id. CIT(A) as ground no.2 and it is evident that the Id. CIT(A) has not decided this issue in his order. It is also pertinent to point out that the assessee has not filed its quarterly statement before us for the purpose of considering the limitation period u/s.201(3) of the Act which specified “two years from the end of the financial year in which the statement is filed”. In order to give a fair opportunity to the assessee, we hereby remand this issue back to the file of the Id. CIT(A) for adjudicating the issue that the impugned order was barred by limitation on the facts of the case. Hence, the appeal is set aside to the file of the Id. CIT(A). As we have not gone into the merits of the case, the other grounds of appeal raised by the assessee are kept open.

13. In the result, the appeal filed by the assessee in ITA No. 2609/Mum/2022 is allowed for statistical purpose.

ITA Nos. 2726 to 2728/Mum/2022

14. As the additional ground raised in the above appeal is not raised in these appeals, the findings on the additional ground in ITA No. 2609/Mum/2022 does not apply to these appeals. The other grounds are identical as that of ITA No. 2609/Mum/2022, the finding applies *mutatis mutandis* to these appeals also. Therefore, all these appeals are remanded back to the file of the Id. CIT(A).

15. In the result, all the appeals filed by the assessee in ITA Nos. 2726 to 2728/Mum/2022 are allowed for statistical purpose.

ITA Nos. 2729 to 2731/Mum/2022

16. The assessee has not taken the plea of limitation u/s. 201(3) of the Act in these appeals. It is observed that the assessee has relied on the order of the Hon'ble Madras High Court in W.A. 1653 of 2022 dated 08.08.2022 with CMP 11323 of 2022 filed by the All India Bank Officers Federation which held that no recovery of the LTC involving foreign leg should be made from the salary of the employees. The assessee contends that in order to avoid contempt proceedings, the assessee has not deducted any sum from the employees. The assessee stated that it was not deemed to be an assessee in default.

17. The Id. AR contends that the assessee has not violated the conditions specified under the first proviso to section 201(1) of the Act and sought for remanding these issues back to the A.O. for verifying the same.

18. We have heard the rival submission. We deem it fit to remand these issues back to the file of the Id. AR for verifying whether the employees has declared the said LTC in their return of income and have duly paid taxes on the same. We direct the Id. A.O. to

give sufficient opportunity of being heard to the assessee. As we have not adjudicated the other grounds of appeal raised by the assessee, they are left open for adjudication if required. Therefore, the appeals filed by the assessee are allowed for statistical purpose.

19. In the result, all the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 28.04.2023

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 28.04.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai