

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
डॉ मनीष बोरड, लेखा सदस्य एवं श्री संजय शर्मा, न्यायिक सदस्य के समक्ष
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 401/Kol/2024
Assessment Year: 2016-17

State Bank of India, Local Head Office 1, Stand Road, Kolkata-700 001 West Bengal	Vs.	ITO(TDS), Ward-3(2), 10B Middleton Road, Kolkata-700 071 West Bengal
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी
(PAN: CALSI 2510 B)		

I.T.A. No. 402/Kol/2024
Assessment Year: 2016-17

State Bank of India, Bikash Bhawan, Salt Lake Sech Bhawan, S.O, Salt Lake, North 24 Parganas, Kolkata-700 091 West Bengal	Vs.	ITO(TDS), Ward-3(2), 10B Middleton Road, Kolkata-700 071 West Bengal
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी
(PAN: CALSO 3616 E)		

I.T.A. No. 406/Kol/2024
Assessment Year: 2016-17

State Bank of India, DGM Secretaria Zonal Office, Jeewan Sudha, 42C J.N. Road, Middletown Row, S.O. Kolkata, Kolkata-700 071, West Bengal	Vs.	ITO(TDS), Ward-3(2), 10B Middleton Road, Kolkata-700 071 West Bengal
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी
(PAN: CALS3 3554 D)		

I.T.A. No. 407/Kol/2024
Assessment Year: 2016-17

State Bank of India, Jeewandee Branch, 1, Middleton Street, Middletown Row, S.O. Kolkata-700 071, West Bengal	Vs.	ITO(TDS), Ward-3(2), 10B Middleton Road, Kolkata-700 071 West Bengal
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी
(PAN: CALSO 3021 E)		

Date of Hearing / सुनवाई की तिथि : **04.09.2024**
Date of Pronouncement/ आदेश उद्घोषणा की तिथि : **13.09.2024**
For the Appellant/ निर्धारिती की ओर से : **Shri Vikas Sarogi, AR**
For the Respondent/ राजस्व की ओर से : **Shri P.P. Barman, DR**

ORDER / आदेश

Per Dr. Manish Borad, AM:

These appeals at the instance of the assessee are directed against the order of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 22nd December, 2023, 29th December, 2023, which are arising out of the orders under Section 201(1)/ 201(1A) of the Income-tax Act, 1961 (the Act) dated 31st March, 2023.

2. As the issue raised in all the appeals are commons and relate to same assessee they are being clubbed together and are disposed off by this common order for the sake of convenience and brevity.
3. The only issue raised in all the appeals is against the finding of Ld. CIT(A) confirming the action of ITO(TDS) holding the assessee in default u/s 201(1) of the Act for the alleged non-deduction of tax at source on the payment of Leave Fare Concession Travel (in short 'LFC') to its employees undertaking travel with a foreign leg.
4. At the outset, the Ld. Counsel for the assessee submitted that the show cause notice was issued on 23.03.2023 and very short time was given asking the assessee to file the submission on 28.03.2023 and then finally the Ld. AO framed the order on 31.03.2023 treating the assessee in default. He submitted that the assessee had no opportunity to furnish the details. He also submitted that at that point of time when payments were made the judgment of Hon'ble

Madras High Court dated 16.02.2015 on the same issue was in favour of the assessee and therefore the assessee company did not deduct the taxes on LFC. However, various employees have themselves offered the LFC as income and paid due taxes in this individual ITR. He further referred to the order of Hon'ble Apex Court dated 28.08.2023 wherein the Hon'ble Court has stayed the operation of their order dated 08.06.2023 in WA No. 1653 /2022 and directed that the petitioner bank shall not make any recoveries from its employees during the pendency of the present petition. Referring to these submissions, he prayed that the issues raised in all these appeals may kindly be restored to the file of AO for necessary verification of facts.

5. On the other hand, the Ld. DR is fair enough in not opposing to the request of the Ld. Counsel for the assessee.
6. We have heard the rival contentions and perused the material on record. We find that the assessee has been held to be in default for non-deduction of tax at source on the LFC involving enroute foreign travel given to its employees. We note that Hon'ble Madras High Court vide its interim order dated 16.02. 2015 held that no deduction of tax at source is required on the LFC amount. Thereafter the issue came up before the Hon'ble Supreme Court and Hon'ble court vide order dated 08.06.2023 decided in favour of the Revenue. However, on 28.08.2023 the Hon'ble Apex Court stayed that the operation of their final judgment on 08.06.2023 and directed the petitioner-bank not to make any recoveries from its employees.
7. We also note that the assessee did not get fair opportunity before the Ld. AO. It is claimed before us that the various employees have

themselves offered leave fare concession to tax and therefore no liability of deduction of tax at source arise on the assessee company. It is also claimed that assessee was under a bonafide belief (though wrong) that no TDS was applicable on reimbursement of LFTC in lieu of Section 10(5) of the Act. Considering all the facts, we deem it appropriate to restore all the issues to file of the AO for necessary verification and learned Assessing Officer is directed that after giving reasonable opportunity of hearing to the assessee shall decide the issue in accordance with the law.

8. In the result, all the appeals of the different assesses are allowed for statistical purposes.

Order is pronounced in the open court on 13th September, 2024

Sd/-

(Sonjoy Sarma /संजय शर्मा)

Judicial Member/न्यायिक सदस्य

Sd/-

(Manish Borad/मनीष बोरड)

Accountant Member/लेखा सदस्य

Dated: 13th September, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- i) State Bank of India, Local head Office1, Strand Road, West Bengal- 700001
 - ii) State Bank of India, Bikash Bhawan, Salt Lake, Sech Bhawan, S.O. Salt Lake, North 24 Paraganas, West Bengal-700091.
 - iii) State Bank of India, Jeewan Sudha, SBI DGM Secretaria Zonal Office, Jeewan Sudha, 42C, J. N. Road, Middleton Row, S.O. Kolkata-700071
 - iv) State Bank of India, Jeewandeeep Branch, 1, Middleton Street, Middleton Row, S.O. Kolkata-700071
2. Respondent – i) ITO(TDS), Ward-3(2), Kolkata.
 - ii) TDS, Circle-3(1), Kolkata
 - iii) TDS, Ward-3(2), Kolkata
 - iv) TDS, Circle-3(1), Kolkata

3. Ld. CIT(A)- Addl./JCIT(A)-Prayagraj
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata