

ITA No. 1153/KOL/2024 (A.Y. 2016-2017)

State Bank of India, Overseas Branch

&

ITA No. 1154/KOL/2024 (A.Y. 2016-2017)

State Bank of India, SIB Branch

**THE INCOME TAX APPELLATE TRIBUNAL,  
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)**

**&**

**Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1153/KOL/2024**

**Assessment Year: 2016-2017**

***State Bank of India, Overseas Branch,.....Appellant  
Kolkata***

***Block-A, Samriddhi Bhawan,  
1, Strand Road, Kolkata-700001  
[PAN:CALSI2516A]***

**-Vs.-**

***Income Tax Officer (TDS).....Respondent  
Circle-3(1), Kolkata  
10B, Middleton Road,  
Kolkata-700071***

**&**

**I.T.A. No. 1154/KOL/2024**

**Assessment Year: 2016-2017**

***State Bank of India, SIB Branch,.....Appellant  
Kolkata,***

***Samriddhi Bhawan,  
4<sup>th</sup> Floor,  
1, Strand Road, Kolkata-700001  
[PAN:CALS27009D]***

**-Vs.-**

***Income Tax Officer (TDS).....Respondent  
Circle-3(1), Kolkata  
10B, Middleton Road,  
Kolkata-700071***

**Appearances by:**

*Shri Vikash Saraogi, A.R., appeared on behalf of the assessee*

*Shri Subhendu Datta, CIT (D.R.), appeared on behalf of the Revenue*

**Date of concluding the hearing: October 22, 2024**

**Date of pronouncing the order: October 23, 2024**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present two appeals are directed at the instance of assessee against the separate orders of ld. Commissioner of Income Tax (Appeals) dated 21<sup>st</sup> March, 2024 passed for assessment year 2016-17. It appears that both the appeals pertained to different quarters of the same assessment year.

2. In the grounds of appeals, solitary issue impugned by the assessee is that ld. CIT(Appeals) has erred in confirming the action of ld. Income Tax Officer (TDS), who had held the assessee in default under section 201(1) of the Income Tax 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.

3. With the assistance of ld. Representatives, we have gone through the record carefully. We find that an identical issue has come up before the Tribunal in ITA Nos. 401, 402, 406 &

407/KOL/2024, wherein the Tribunal vide order dated 13<sup>th</sup> September, 2024 has passed the following order:-

*“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 Id. 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.*

4. The facts in the present appeals are identical. The ld. Assessing Officer had issued notice on 23.03.2023 and ultimately passed the order on 31.03.2023. Thus, according to the assessee, the time limit given by the ld. Assessing Officer to explain the case was very less. We find that ld. CIT(Appeals) has discussed the issue in detail but that pertains to the position of law in similar type of cases. It is not discernable whether the defense sought to be put forth by the assessee is available before the ld. CIT(Appeals) or not.

The issue undertaken by the Id. CIT(Appeals) is that so many disallowances were made in similar type of cases, which were challenged in various Writ Petitions and such Writ Petitions have been decided against the assessee. He further observed that even before the Hon'ble Supreme Court, this issue was taken up and Hon'ble Supreme Court stayed the operation of the judgment of the Hon'ble High Court but ultimately dismissed the SLP. We are of the view that such facts have not been discussed by the Id. Assessing Officer and whether factual details of the assessee were permitted to be filed or not is not ascertainable. Therefore, following the decision of the Coordinate Bench, we allow both these appeals and set aside the issues to the file of Id. Assessing Officer, who will pass the fresh order under section 201(1) and 201(a) of the Income Tax Act.

**5. In the result, bot the appeals of the assessee are allowed.**

Order pronounced in the open Court on 23/10/2024.

Sd/-

Sd/-

**(Rajesh Kumar)**  
**Accountant Member**

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 23<sup>rd</sup> day of October, 2024***

*Copies to :(1) State Bank of India, Overseas Branch,  
Kolkata*

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1, Strand Road, Kolkata-700001*

*(2) State Bank of India, SIB Branch,  
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(3) *Income Tax Officer (TDS),  
Circle-3(1), Kolkata  
10B, Middleton Road, Kolkata-700071*

(4) *CIT(A)-*

(5) *CIT - , Kolkata;*

(6) *The Departmental Representative;*

(7) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***