

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**1. आयकरअपीलसं./ ITA No. 287/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2015-16)**

&

**2. आयकरअपीलसं./ ITA No. 289/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2017-18)**

The Chief Manager (Administration) State Bank of India Regional Business Office (RBO), 372/44, Gwalior Road Civil Lines, Jhansi	बनाम/ Vs.	Addl. CIT (TDS) Kanpur
स्थायीलेखासं./जीआइआरसं./PAN/GIR/TAN No. AGRS-14799-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Deepak Maheshwari, Adv.-Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Shailendra Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	11-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	28-03-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2015-16 and 2017-18 arises out of separate orders of first appellate authority. The grievance of the assessee is identical i.e., confirmation of levy of penalty u/s 271C. First, we take up appeal for AY 2015-16 which arises out of an order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 10-06-2024 confirming levy of penalty u/s 271C.

2. From the case records, it emerges that impugned penalty has been levied for short deduction of tax at source on payment of Leave Fare Concession (LFC) journey to overseas destination as claimed by various employees. An order was passed u/s 201(1) / 201(1A) for short deduction of tax at source raising certain demand against the assessee. It was held that as per express provisions of Sec. 10(5), the exemption could be granted only for journey to any place in India and there was no intention to allow the employees to travel abroad under the garb of benefit available u/s 10(5). The reimbursement so made by the assessee was not exempt and liable for TDS. Consequently, impugned penalty was levied for Rs.1.07 Lacs u/s 271C for want of any satisfactory explanation from the assessee.

3. During appellate proceedings, it was submitted that assessee paid LFC / LTA to its employees and LFC was granted for domestic travel. Under the package, the employees visited foreign places en-route to the designated place in India and the assessee employer did not deduct any TDS on such reimbursements under a bona-fide belief that such reimbursements were exempt u/s 10(5) which do not require any TDS. No TDS was deducted under bona fide impression that if the destination was in India irrespective of the fact that en-route journey was out of India, the entire reimbursements would be exempt. This belief was supported by interim order dated 16-02-2015 of Hon'ble Madras High Court in MP No.2 of 2-014, WP No. 11991/2014 permitting assessee banker not to deduct TDS on such reimbursements. The assessee bank, following consistent practice,

considered LFC claim as exempt and computed tax liability accordingly. The same was under a bona-fide belief that even when the journey involved a foreign leg, the employees would be entitled for exemption of Sec. 10(5) when the designated place was in India. There was no intention / motive either to defy the position of law or to evade any tax. Reference was made to the decision of Hon'ble Supreme Court in the case of **Pricewaterhouse Coopers P. Ltd (25 Taxmann.com 400)** holding that imposition of penalty was not warranted since the assessee had committed an inadvertent and bona fide error and not intended to conceal its income. However, Ld. CIT(A) rejected the same on the ground that this issue was ultimately been held against the assessee by Hon'ble Supreme Court (reported as 144 Taxmann.com 131) holding that the assessee was required to deduct tax at source on such reimbursements. Aggrieved, the assessee is in further appeal before us.

4. From the facts, it clearly emerges that the assessee, following consistent stand as taken earlier, did not deduct tax at source on impugned reimbursements under a bona-fide belief that irrespective of en-route journeys, when the ultimate destination was in India, such reimbursements would be exempt u/s 10(5). The same is also supported by the fact that the Hon'ble High Court of Madras granted interim order favoring the assessee. Finally, the issue has been put to rest by Hon'ble Apex Court holding that the assessee would be required to deduct TDS on such reimbursements. On these facts, it could very well be said that deduction of TDS on impugned

reimbursements was not free from doubt and it was a debatable issue which has ultimately been settled by Hon'ble Apex Court. However, the assessee could not be visited with impugned penalty for short deduction of TDS. The cited case law of Hon'ble Apex Court in the case of **Pricewaterhouse Coopers P. Ltd (supra)** duly supports the case of the assessee. It was held by Hon'ble court that imposition of penalty was not warranted since the assessee had committed an inadvertent and bona fide error and not intended to conceal its income. Respectfully following the same, we delete the impugned penalty. The appeal stand allowed.

4. Facts in AY 2017-18 are quite identical. Accordingly, our above adjudication for AY 2015-16 shall *mutatis mutandis* apply to this appeal also. The appeal stand allowed.

5. Both the appeals stands allowed as indicated upon conclusion of hearing.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(SATBEER SINGH GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

Dated: 28-03-2025

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR
ITAT AGRA