

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.1465/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

State Bank of India
Industrial Finance Branch,
103, Mount Road, Chennai 600 002.
[TAN:CHES02510E]

Vs. The Assistant Commissioner of
Income Tax,
TDS Circle 3(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. G. Vardini Karthik, Advocate (virtual)
प्रत्यर्थी की ओर से/Respondent by : Shri N. Madan Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 02.04.2025
घोषणा की तारीख /Date of Pronouncement : 27.06.2025

आदेश / O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 21.03.2024 passed by the Addl/JCIT(1)-1, Coimbatore for the assessment year 2015-16.

2. The assessee raised 17 grounds of appeal, amongst which, the only issue emanates for our consideration as to whether the Id. CIT(A) is justified in confirming the order passed under section 201/201(1A) of the Income Tax Act, 1961 ["Act" in short] in the facts and circumstances of the case.

3. Brief facts of the case are that the assessee is a nationalized public sector bank, which is assessed to TDS having TAN CHES02510E for the AY 16-17(FY 2015-16). The case of the assessee was selected for e-verification regarding LTC payments made to assessee's employees. In accordance with the same, the assessee was directed to provide details of LTC payments [foreign travel] and reasons for non deduction of TDS under section 192B of the Act. The reply of the assessee and details are reproduced in page 2 & 3 of the penalty order. According to the Assessing Officer, as it was observed from the reply, that one of the employees of the assessee claimed LFC (leave fare concession) amounting to ₹.1,85,452/- involving travel places outside India. The Assessing Officer observed that the exemption under section 10(5) of the Act is not available as the place of travelling of the said employee is not situated in India. The Assessing Officer further observed that the Hon'ble Supreme Court in the case of SBI v. ACIT in Civil Appeal No. 8181 of 2022) dated 04.11.2022 confirmed the view of the Assessing Officer's stand therein, treating the employer i.e., the assessee in default for non deducting tax source while realizing payments to its employee as leave fare concession on foreign travel. Accordingly, the Assessing Officer determined non deduction of tax at source under section 201 of the Act and interest under section 201(1A) of the Act at ₹.55,645/- and ₹.53,420/-

respectively vide his order dated 31.03.2023 passed under section 201/201(1A) of the Act. However, the Assessing Officer suspended recovery proceeding till final disposal of W.A. No. 1653 of 2023 pending on the file of the Hon'ble High Court of Madras.

4. Aggrieved by the order of the Assessing Officer under section 201/201(1A) of the Act, the assessee preferred an appeal before the Id. CIT(A). According to the Id. CIT(A), some assesseees filed detailed reply and some filed no reply. The Id. CIT(A) reproduced the submissions of some assesseees from para 5.3 to 5.7 of the impugned order. The Id. CIT(A), vide para 5.8 of the impugned order, observed that the issue, i.e., the receipt from LTC on foreign tour are taxable and the employer State Bank of India is liable to deduct TDS has reached a finality. The sequence of events and position after 24.06.2022 is discussed in para 5.10 of the impugned order. The Id. CIT(A) was of the opinion that the assessee was liable to deduct TDS on LTC/LFC from 08.06.2023 to 28.08.2023 in accordance with the law laid down by the Hon'ble Supreme Court vide order dated 04.11.2022. Having observed so, the Id. CIT(A) held the order of the Assessing Officer under section 201 of the Act is correct in respect of deduction of TDS on LTC/LFC amount paid as on the date of order. Accordingly, the Id. CIT(A) dismissed the batch of the

appeals vide his directions in para 5.23 of the impugned order. Having aggrieved by the order of the Id. CT(A), the assessee is in appeal before us.

5. The Id. AR Ms. G. Vardini Kathik, Advocate submits that the respondent revenue erred in raising demand under section 201/201(1A) of the Act on the ground of non deduction of TDS under section 192B of the Act for AY 2015-16 and further erred in levying consequential interest under section 201(1A) of the Act for non deduction of TDS. She submits that the assessee's interest had been protected by the interim order of the Hon'ble Jurisdictional High Court vide order dated 16.02.2015 in WP No. 11991 of 2014. She argued that the Revenue failed to consider the treatment of recoverable amount as income and deduction of tax at source by the assessee would have amounted to violation of interim stay order passed by the Hon'ble High Court. The assessee is evidently restrained from deduction of TDS by operation of interim stay, thereby, following recovery in lieu of TDS. The Id. CIT(A) has passed the impugned order during the pendency of SLP before the Hon'ble Supreme Court. She submits that the Id. CIT(A) failed to consider the proforma submitted by the employees containing the entire details of journey undertaken and the related expenses are not hit by the provisions of

section 10(5) of the Act. Further, she argued that the Id. CIT(A) is misplaced in relying on the decision of the Hon'ble Supreme Court in Civil Appeal No. 8181 of 2022. The Id. CIT(A) ought to have seen that once conditions specified in proviso to section 201(1) of the Act are not satisfied, the interest under section 201(1A) of the Act will be untenable. The Id. CIT(A) failed to see that when there are different views taken by the coordinate benches of the Tribunal. However, without prejudice, she argued that the Id. CIT(A) erred in not appreciating that the assessee was under bonafide belief that no TDS is applicable on the reimbursement of the LTC/LFC. The Id. AR prayed to allow the grounds of appeal.

6. The Id. DR Shri N. Madan Kumar, JCIT submits that the assessee is liable to deduct TDS on LTC/LFC from 24.06.2022 to 08.08.2022 and from 08.06.2023 to 28.08.2023, there was no court stay during these periods. The assessee grossly failed to deduct TDS by following the decision of the Hon'ble Supreme Court in Civil Appeal No. 8181 of 2022. The assessee has not done any TDS recovery during these periods is hiding behind court order claiming that they were not able to recover. He drew our attention to para 5.12 of the impugned order and submits that the recovery of TDS amount is certain in pursuance of the decision of the Hon'ble Supreme Court in Civil Appeal No. 8181 of 2022. Further, he

drew our attention to the assessee in the chart at Sl. No. 15 and vehemently argued that the order of the Id. CIT(A) in confirming the order of the Assessing Officer under section 201/201(1A) of the Act dated 31.03.2023 is justified. He prayed to dismiss the grounds raised by the assessee.

7. Heard both the parties and perused the material available on record. We note that the assessee is a Branch of State Bank of India having the branch at Harrington Road, KRM Plaza, Chetpet, Chennai 600 031. The assessee, as rightly pointed out by the Id. DR, which has been admitted by the Id. AR, found place at Sl. No. 15 of the chart at page 17 of the impugned order. The case of the Assessing Officer was that one of the employee of the assessee claimed LTC/LFC amounting to ₹.1,85,452/-, wherein, travel place outside India was involved. The exemption of LFC/LTC is allowed only if the employee travels to any place in India with the source and end destination within India, but not outside India. The Assessing Officer reproduced the details of travel involving foreign travel in page Nos. 2 & 3 of the Assessing Officer's order, which is not disputed by the assessee. Basing on such facts, the Assessing Officer treated the assessee as the 'assessee is in default' for non-deduction of TDS under section 192B of the Act in the case of one of its

employees by name Shri M. Amirthalingam. In order to come to such conclusion, the Assessing Officer strongly relied on the decision of Hon'ble Supreme Court in assessee's own case in Civil Appeal No. 8181 of 2022, which is evident from para 6 of Assessing Officer's order. The relevant part reproduced at para 6 of the assessment order is reproduced herein below for better understanding:

6. *Recently, the Hon'ble Supreme Court of India in the case of State Bank of India w Assistant commissioner of Income Tax Civil Appeal to 8181 of 2022) dated 4th Nov, 2022 has dismissed the assessee's appeal and confirmed AD's stand as treating the employer as assessee in default for not deducting tax at source while releasing payments to its employees as Leave travel Concession (LTC)(on foreign travel). The relevant part of the decision of the Apex Court is as under*

10. The provisions of law discussed above prescribe that the air fare between the two points, within India will be given and the LTC which will be given will be of the shortest route between these two places, which have to be within India. A conjoint reading of the provisions discussed herein with the facts of this case cannot sustain the argument of the appellant that the travel of its employees was within India and no payments were made for any foreign leg involved.

11. We do not want to get into the role of the travel agencies and the present dynamics of or fore, but it is difficult for us to accept that a person will avail foreign tour without paying any price for it. We leave it at that.

12. It can be seen from the records that many of the employees of the appellants had undertaken travel to Port Blair via Malaysia, Singapore or Port Noir via Rangkok, Malaysia or Rasmeswaram via Mauritius or Madurai via Dubai, Thailand and Port Blair via Europe etc. It is very difficult to appreciate as to how the appellant who is the assessee-employer could have failed to take into account this aspect. This was the elephant in the room.

13. The contention of the Appellant that there is no specific bar under Section 10(5) for a foreign travel and therefore a foreign journey can be availed as long as the starting and destination points remain within India is also without merits. LTC is for travel within India, from one

place in India to another place in India. There should be no ambiguity on this.

14. The second argument urged by the appellant that payments made to these employees was of the shortest route of their actual travel cannot be accepted either. It has already been clarified above, that in view of the provisions of the Act, the moment employees undertake travel with a foreign leg, it is not a travel within India and hence not covered under the provisions of Section 10(5) of the Act.

15. A foreign travel also frustrates the basic purpose of LTC. The basic objective of the LTC scheme was to familiarise a civil servant or a Government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel. In para 4.3.4 of the 6th Pay Commission Report dated March, 2008 this is what was said:-

"4.3.4. The demand for allowing travel abroad at least once in the entire career under the scheme is not in consonance with the basic objective of the scheme. The Government employee cannot gain any perspective of the Indian culture by traveling abroad. Besides, the attendant cost in foreign travel would also make the expenditure under this scheme much higher. The Commission is, therefore, not inclined to concede the demand to allow foreign travel under LTC."

This is also an objection of the Revenue which has been raised in its counter affidavit filed by respondent no. 1-Assistant Commission of Income Tax wherein the Revenue has asserted that the provision for LTC was introduced to motivate employees and encourage its employees towards tourism in India and it is for this reason that reimbursement of LTC was exempted. There was no intention of legislature to allow the employees to travel abroad in the garb of LTC available by virtue of Section 10(5) of the Act Therefore, the Revenue has a valid objection (apart from other objections which are clearly violative of the Statute), that the intention and purpose of the scheme is also violated in the garb of tour within India, foreign travel is being availed.

16. The aforementioned order passed by the CIT(A) has rightly held that the obligation of deducting tax is distinct from payment of tax. The appellant cannot claim ignorance about the travel plans of its employees as during settlement of LTC Bills the complete facts are available before the assessee about the details of their employees'

travels. Therefore, it cannot be a case of bonafide mistake, as all the relevant facts were before the Assessee employer and he was therefore fully in a position to calculate the 'estimated income' of its employees. The contention of Shri K.V. Vishwanathan, learned senior advocate that there may be a bonafide mistake by the assessee-employer in calculating the 'estimated income' cannot be accepted since all the relevant documents and material were before the assessee-employer at the relevant and the assessee employer therefore ought to have applied his mind and deducted tax at source as it was his statutory duty, under Section 192(1) of the Act.

7. In view of the above, the Assessee Bank was issued a show cause u/s 201(1)/201(1A) of the IT Act, 1961, dated 28. 03. 2023 treating the assessee deductor in default under the meaning of section 201(1) for non-deduction of TDS u/s 192B of the Act on the reimbursement of LTC payment made to its employee (on foreign travel), Shri M. Amirthalingam.

8. Since, the assessee deductor has not provided the Form-16 of the employee to whom the amount was paid, the amount of tax not deducted at source and not deposited it in the Govt. treasury during the FY 2015-16 (AY 2016-17), therefore, the TDS rate is taken at 30% of LFC amount paid during the year. Further, the assessee has not provided the date of payment of LFC made to its employee. Therefore, the date will be taken as the first date of FY 2015-16. Accordingly, the TDS default is computed as below:

Sr. No.	Name of the employee	LFC amount	Date of payments	TDS to be deducted	Delay in months	Interest u/s. 201(1A)
1	M. Amirthalingam	1,85,482	24.06.2015	55,645	96	53,420

9. Hence total non-deduction of tax u/s. 201(1) is worked out at Rs.55,645/- and the resultant interest u/s. 201(1A) is determined at Rs.53,420/-, hence, totalling of TDS default u/s. 192B for the year under consideration is Rs.1,09,065/-(55,645-53,420)/-.

10. Hence, in order to protect the interest of revenue, considering the time limit to complete the proceedings and as to enforce the Hon'ble Supreme Court of India's order in the case of "State Bank of India Vis Assistant Commissioner of Income-tax (civil Appeal No 8181 of 2022 dated 4th November 2022, order u/s 201(1)/(1A) of the Income tax Act 1961, is hereby passed. However, since the matter is pending before Hon'ble High Court of Madras, no recovery proceedings shall be enforced till the final disposal of W.A. No. 1653 of 2023 by the Hon'ble High Court of Madras."

8. On careful reading of the above, the Hon'ble Supreme Court rejected the contention of the assessee therein, i.e., State Bank of India in

contending that there is no specific bar under section 10(5) of the Act for a foreign travel and foreign journey can be availed as long as the starting and destination points remain within India. The Hon'ble Supreme Court was pleased to hold that there is no ambiguity in for LTC is for travel within India, from one place in India to another place in India. Further, the Hon'ble Supreme Court did not accept another contention of the assessee i.e., State Bank of India therein, in contending that the payments made to employees was of the shortest route of their actual travel and held the provisions under section 10(5) of the Act is not covered the movement the employees undertake travel with a foreign leg. The Hon'ble Supreme Court was pleased to observe, by referring to 6th Pay Commission Report, the basic objective of the LTC scheme was to familiarize a civil servant or Government employee to gain some perspective of Indian culture by travelling in this vast country. Further, the Pay Commission also rejected the demand of cash compensation in lieu of LTC involving foreign travel. Further, the Hon'ble Supreme Court accepted argument of the Revenue, as there was no intention of the Legislature to allow the employees to travel abroad in the garb of LTC available by virtue of section 10(5) of the Act, thereby, the Hon'ble Supreme Court upheld the order of the Id. CIT(A) in holding that the obligation of deduction tax is distinct from payment of tax and the

assessee therein i.e., State Bank of India, cannot claim ignorance about the travel plans of its employees as during settlement of LTC bills as the complete facts are available before the assessee therein, State Bank of India about the details of their employees travels. Therefore, it is clear that the Hon'ble Supreme Court clearly held that exemption under section 120(5) of the Act is not available for the employees claiming LTC involving foreign travel. Thus, the facts and circumstances of the present case are similar and identical to the facts and circumstances before the Hon'ble Supreme Court, we hold the Assessing Officer rightly held that the assessee deductor in default under the meaning of section 201(l) of the Act for non-deduction of TDS under section 192B of the Act on the reimbursement of LFC payment made to its employee (on foreign travel), i.e., Shri M. Athmalingam, which was confirmed by the Id. CIT(A). Therefore, we find no infirmity in the order of the Id. CIT(A) in confirming the order of the Assessing Officer in passing order under section 201(1) and 201(1A) of the Act.

9. Coming to the next aspect regarding the sequence of events and position after 24.06.2022 as discussed by the Id. CIT(A) in para 5.10 at page 15 of the impugned order, which is reproduced hereunder:

5.10 The sequence of events and position after 24-06-2002 is as under:

i. The writ petition is dismissed in 24-06-2002 and the stay is vacated.

ii. From 24-06-2022 onwards the petitioners undertaking that the whole amount of LTC paid must be recovered is applicable.

iii. On 08-08-2022 Division bench of the Hon'ble High Court of Madras in Writ Appeal 1653/2022 filed against the judgment dated 24/06/2022 stayed the judgment and ordered that during-pendency of this appeal, no recovery shall be affected from their salary onwards the petitioners.

iv. The bank had authority to recover the whole amount of reimbursement given after 24.06.2022 and the bank has not done this. If the bank has recovered the amount from the employee there is no question of TDS as there is no LTC reimbursement.

v. On 08-08-2022 Division bench of the Hon'ble High Court of Madras stayed the order dated 24-06-2022 and the order of Apex Court in State Bank of India against the Assistant Commissioner of Income Tax in Special Leave Appeal (C) No.9876 of 2020, SLP No. 9876 of 2020/ CIVIL APPEAL NO 8181 OF 2022 is dated 04.11.2022. From 04-11-20022 onwards the appellant has to deduct TDS on foreign LTC reimbursement given.

vi. On 08.06.2023 Hon'ble Division Bench of the Madras High Court allowed the W.A No. 1653/2022 quashed the Circulars dated 07.04.2014 issued by IBA and the letter dated 15.04.2014 issued by the Bank.

vii. From 08.06.2023 the employees are eligible for foreign LTC and the bank is liable to deduct TDS according to decision of the Apex Court in [2022] 144 taxmann.com 131 (SC) SUPREME COURT OF INDIA State Bank of India Assistant Commissioner of Income-tax.

viii. The Apex Court on 28.08.2023 has stayed the operation of the judgment of the Madras High Court in W.A No. 1653 /2022 and the Bank is directed not to make any recoveries from its employees during the pendency of the SLP. Thus from 28.08.2023 the Bank cannot make any recovery from employee.

10. On perusal of the above, we note that according to the Id. CIT(A) the receipt from LTC of foreign tour are taxable and the assessee is liable to deduct TDS is attained finality. Further, we note that the assessee is

not able to deduct TDS in view of order of stay by Hon'ble High Court of Madras. Further, it is noted that the interim stay was granted on an undertaking by the assessee that amount paid towards LTC would be refunded by the individual officer's concerned, in case dismissal of writ appeal by the Hon'ble High Court. Admittedly, the dispute is before the Hon'ble Supreme Court in SLP and vide order dated 28.08.2023, the Hon'ble Supreme Court was pleased to stay the operation of the judgement of Hon'ble High Court in W.A. 1653/2022, wherein, the assessee is directed not to make any recoveries from its employees during the pendency of the SLP. We find no dispute in this regard by both the parties. We note the Id. CIT(A) observed that there was no stay from 24.06.2022 to 08.08.2022 and from 08.06.2023 to 28.08.2023 and that the assessee neither deducted tax on LTC nor made recovery, accordingly held the order of the Assessing Officer is correct in holding that the assessee is in default for non-deduction of TDS during 24.06.2022 to 08.08.2022 and from 08.06.2023 to 28.08.2023. We find no infirmity in the order of the Id. CIT(A) as we completely agree with the reasons recorded from paras 5.8 to 5.10 of the impugned order in confirming the order of the Assessing Officer. Thus, the grounds raised by the assessee are dismissed.

11. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 27th June, 2025 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 27.06.2025

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.