

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1227/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14

State Bank of Bikaner and Jaipur (Now State Bank of India) Plot No. B-33, Small Scale Industrial Area, Kota.	बनाम Vs.	The ITO (TDS), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JDHSO3243C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Smt. Pankaj Jain (C.A.)
राजस्व की ओर से/ Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02/01/2019
उदघोषणा की तारीख/ Date of Pronouncement : 07/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Kota dated 31.08.2018 for Assessment Year 2013-14 wherein the assessee has taken following grounds of appeal:-

"1. The CIT(Appeals) Kota has rejected our appeal against the demand raised by the ITO TDS, Kota for not giving LTC benefit under section 10(5) due to foreign destination is involved in LFC Payment made by

Bank of his Officers i.e, the places of travel are not situated in India, it cannot be termed as the shortest route to the destination in India, and the National carrier is not involved/used for purposes of the air travel. The ITO(TDS), Kota passed an order dated 12.01.2015 under section 201(1) read with section 201(1A) of Rs. 369393/- for deposit as Assessee on default and treating the LTC payments made to employees of corporate office during financial year 2012-13 as taxable and has treated the assessee bank as an assessee in default for purpose of section 201 and also charge intt U/s 201(1A) which was not justify, under the facts & circumstances of the case and in law, The Ld ITO (TDS) and Ld. CIT(Appeals), Kota has erred in holding that the Appellant was responsible for deduction tax at sources on LTC/LFC bill reimbursement and creating a demand of Rs. 369393/- in the hands of the appellant alleging short deduction.

2. The appellant has submitted various submission for no deduction of tax at sources on LTC/LFC which was not considered by the ITO(TDS), Kota and in same the Commissioner of the Income Tax (Appeals), Kota and rejected our Appeals on same Grounds, we request that this is no assessee default and other grounds off appeal will be submitted at the time of hearing.

3. The appellant prays that the addition of Rs. 369393/- made in respect of LTA disallowed by the Income Tax Officer, (TDS), Kota to be deleted."

2. Briefly the facts of the case are that the ITO(TDS) observed that the assessee Bank has made reimbursement of LFC/LTC claim of its certain employees who as part of their LFC/LTC have submitted claim

towards travel which also included foreign leg of the travel. The ITO(TDS) referring to the provisions of Section 10(5) of the Income Tax Act and Rule 2B of Income Tax Rules, 1962 held that the exemption for LTC/LFC is available only for visit to any place in India, provided that the amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel. Therefore, the assessee bank was held as "assessee in default" for not deducting the TDS on the reimbursement to the extent of journey performed by these five officers outside of India. Accordingly, an order under Section 201(1)/201(IA) was passed determining the tax and interest liability of Rs. 369393/-.

3. On appeal by the assessee bank, the Id. CIT(A) relying on the decision of the Coordinate Bench in case of SBI vs. ACIT(TDS) 81 taxman.com 192 held that the ITO(TDS) has rightly held the assessee bank to be in default in so far as short deduction of tax U/s 201 and interest U/s 201(1A) of the Act upto the extent of reimbursement made to its Officers for foreign travel leg of LTC claim.

4. The Id AR was heard who has submitted that the assessee bank was under a bonafide belief that no TDS is required to be deducted as the designated place of travel is in India even though the travel claim include travel to a foreign country. Per contra, the Id DR has submitted that the facts of the present case are identical to the facts before the Coordinate Jaipur Bench in case of SBI vs. ACIT(TDS) which has rightly been followed by the Id CIT(A).

5. We have heard both the parties and perused the material available on record. The Id. CIT(A) has followed the decision taken by the Coordinate Bench in case of SBI vs. ACIT(TDS) 81 taxman.com 192 where (speaking through one of us), we have held as under:

"9. We have heard the rival submissions and perused the material available on record. The facts of the case are pari-materia with the decision of the Coordinate Bench in case of SBI (supra) wherein the relevant findings are as under:

"8. Having carefully examined the orders of the lower authorities in the light of the rival submissions and the documents placed on record, we find that as per provisions of section 10(5) of the Act, only that reimbursement of travel concession or assistance to an employee is exempted which was incurred for travel of the individual employee or his family members to any place in India. Nowhere in this clause it has been stated that even if the employee travels to foreign countries, exemption would be limited to the expenditure incurred to the last destination in India. For the sake of reference, we extract the provisions of section 10(5) of the Act as under:—

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

[(5) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,—

- (a) *from his employer for himself and his family, in connection with his proceeding on leave to any place in India ;*
- (b) *from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service, subject to such conditions as may be prescribed (including conditions as to number of journeys and the amount which shall be exempt per head) having regard to the travel concession or assistance granted to the employees of the Central Government:*

9. On perusal of this section, we are of the view that this provision was introduced in order to motivate the employees and also to encourage tourism in India and, therefore, the reimbursement of LTC/LFC was exempted, but there was no intention of the Legislature to allow the employees to travel abroad under the garb of benefit of LTC available by virtue of section 10(5) of the Act. Undisputedly, in the instant case the employees of the assessee have travelled outside India in different foreign countries and raised claim of their expenditure incurred therein. No doubt, the assessee may not be aware with the ultimate plan of travel of its employees, but at the time of settlement of the LTC/LFC bills, complete facts are available before the assessee as to where the employees have travelled, for which he has raised the claim; meaning thereby the assessee was aware of the fact that its employees have travelled in foreign countries, for which he is not entitled for exemption under section 10(5) of the Act. Thus, the payment made to its employees is chargeable to tax and in that situation, the assessee is under

obligation to deduct TDS on such payment, but the assessee did not do so for the reasons best known to it. We have also carefully examined the Circular placed by the Id. counsel for the assessee during the course of hearing, in which a reference was made to the interim order of the Hon'ble Madras High Court dated 16.2.2015. Through the interim order, the Hon'ble Madras High Court has permitted the bankers not to deduct TDS on or after 16.2.2015 on the amount paid/reimbursed to the employees of the bank in respect of LTC/HTC availed where the employee has visited a foreign city/country, irrespective of the fact whether the LFC bills were submitted and paid prior to 16.2.2015; meaning thereby this Circular was passed consequent to the interim order of the Hon'ble Madras High Court. But in the present case, the journey was undertaken in the year 2012 and the bills were settled during that year; meaning thereby at the relevant point of time when the bills were settled, there was no order of the Hon'ble Madras High Court and the assessee was under obligation to deduct TDS on the reimbursement of expenditure incurred by the assessee on foreign travel. In the light of these facts, we are of the considered opinion that the Revenue has rightly held the assessee to be in default, as the assessee has not deducted TDS intentionally on the reimbursement of expenditure incurred on LTC/LFC. Moreover, the Id. CIT(A) has directed the Assessing Officer to recalculate the liability of TDS at 10%. We, therefore, find no infirmity in the order of the Id. CIT(A) and we confirm the same."

10. Similarly, the decision of the Coordinate Bench in case of Om Prakash Gupta (*supra*) also supports the case of the Revenue wherein the Coordinate Bench has held as under:

"12. The said sub-section provides that where an individual had received travel concession or assistance from his employer for proceeding on leave to any place in India, both for himself and his family, then such concession received by the employee is not taxable in the hands of the employee. Similar exemption is allowed to an employee proceeding to any place in India after retirement of service or after the termination of his service. The provisions of the Act are in relation to the travel concession/assistance given for proceeding on leave to any place in India and the said concession is thus exempt only where the employee has utilized the travel concession for travel within India. Further under Rule 2B of the Income Tax Rules the condition for allowing exemption under section 10(5) of the Act are laid down. The conditions are in respect of various modes of transport. However, the basic condition is that the employee is to utilize the travel concession in connection with his proceeding to leave to any place within India, either during the course of employment or even after retirement of service or after termination of service. Reading of section 10(5) of the Act and Rule 2B of the Rules in conjunction lays down the guidelines for claiming exemption in relations to the travel concession received by an employee from his employer or former employer, for proceeding on leave to any place in India. The person is to undertake the journey to any place in India and thereafter return to the place of employment and is entitled to reimbursement of expenditure on

such travel between the place of employment and destination in India. Rule 2B of the Rules further lays down the conditions that the amount to be allowed as concession is not to exceed the air economy fair of the National Carrier by the shortest route to the destination in India. The said condition in no way provides that the assessee is at liberty to claim exemption out of his total ticket package spent on his overseas travel and part of the journey being within India. We find no merit in the claim of the assessee in the present case and we are in conformity with the observation of the CIT (Appeals) in this regard, which has been reproduced by us in the paras hereinabove. In view thereof, we reject the claim of the assessee of exemption under section 10(5) of the Act. The ground of appeal No. 3 raised by the assessee is thus dismissed."

11. *No contrary authority has been brought to the notice of the Bench. We, therefore, do not see any reason to deviate from the said view taken by the Coordinate Benches. In the result, the grounds no. 1-6 of the assessee's appeal are dismissed."*

6. In absence of any contrary authority, following the consistent view taken by the Co-ordinate Benches referred supra, the order of the Id CIT(A) is hereby affirmed where he has held the assessee bank to be assessee in default for short-deduction of TDS on LFC/LTC claim relating to foreign leg of the travel of its employees being not eligible for exemption under section 10(5) r/w Rule 2B. The grounds of appeal taken by the assessee are accordingly dismissed.

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 07/01/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/01/2019.

*Santosh

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

1. अपीलार्थी / The Appellant- State Bank of Bikaner and Jaipur, Kota.
2. प्रत्यर्थी / The Respondent- ITO(TDS), Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1227/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar