IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2524/Bang/2019
Assessment year : 2012-13

State Bank of India, No.22, J.C Road, Bangalore City Branch, Bengaluru-560 002. PAN – BLRS 04942 D	Vs.	The ACIT. Commissioner of Income-tax, TDS, Range-3, Bengaluru-560 032.
APPELLANT		RESPONDENT

Assessee by	:	Shri Muralidhara H, C.A
Revenue by	:	Shri Priyadarshi Misra, JCIT (DR)

Date of hearing	:	19.02.2020
Date of Pronouncement	:	28.02.2020

O R D E R

Per B.R Baskaran, Accountant Member:-

The appeal filed by the assessee is directed against the order dated 31/10/2019 passed by ld CIT(A) -10, Bengaluru and it relates to asst. year 2012-13.

2. The assessee is aggrieved by the decision of ld CIT(A) in confirming the penalty levied by the AO u/s 271C of the Act.

3. We heard the parties and perused the record. The assessee is a banking institution. A survey u/s 133A of the Act was conducted in the hands of the assessee in order to verify compliance of TDS

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provisions. It was noticed that the assessee has provided LTC facility to its employees and some of the employees have undertaken foreign travel by availing LTC facility. The exemption granted u/s 10(5) of the Act was available only to travel undertaken within India. It was noticed that the assessee herein has extended exemption u/s 10(5) of the Act in respect of travel undertaken by the employees to foreign destination also.

4. Since the travel undertaken outside India is not eligible for exemption u/s 10(5) of the Act, the survey officials held that assessee should have deducted TDS on the LTC amount also without granting exemption u/s 10(5) of the Act. Since there was default on the part of the assessee in not deducting TDS for payments made towards foreign travel, an order u/s 201(1) was passed in the hands of the assessee. Subsequently penalty order u/s 271C of the Act was passed levying a penalty of Rs.2,56,835/-. The ld CIT(A) also confirmed the penalty so levied and hence the assessee has filed this appeal before the Tribunal.

5. At the time of hearing the ld AR placed his reliance on the order dated 18/11/2019 passed by the Tribunal in ITA No.118/Bang/2019 SBI, Gigani Branch and Others and submitted that, on an identical set of facts, the co-ordinate bench of Tribunal has deleted the penalty levied u/s 271C of the Act. He submitted that the Tribunal, in the above said case, has followed the decision rendered by another coordinate bench in the case of Syndicate Bank (ITA No.651 to 656/Bang/2019 dated 19/7/2019. Accordingly he prayed deletion of impugned penalty.

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6. The ld DR did not controvert the factual aspects presented by ld AR. However, he supported the order passed by Ld CIT(A).

7. We heard the rival contentions and perused the record. We noticed that the issue under consideration is squarely covered by the order passed by the coordinate bench in the hands of State Bank of India and Syndicate Bank (referred Supra). For the sake of convenience we extract below the order passed by the coordinate bench in the case of State Bank of India (referred Supra).

> "*5. We heard rival submissions and perused material on record. Prima facie, the sole disputed issue is in respect of penalty levied u/s 271C of the Act for non-deduction of tax at source on LTC. The assessee-bank has failed to deduct TDS but in proceedings u/s 201 of the Act, the assessee has accepted the claim and paid the amounts. The fact that non-deduction of TDS has come out in the survey operations u/s 133A of the Act. We found that the assessee has not deducted TDS and explained reasonable cause in the penalty proceedings and the assessee's action is not wanton but on a bona fide belief. We found the co-ordinate bench of Tribunal in the case of Syndicate Bank vs. ACIT in ITA Nos.651 to 56/Bang/ 2019 dated 19/07/2019 has deleted the penalty u/s 271C of the Act and has observed at paras.11 to 14 which read as under:*

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"11. The learned counsel for the Assessee submitted that when the Hon'ble High Court admits an appeal against the order in quantum proceedings, no penalty can be levied on the Assessee. It was submitted that when the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable. In such circumstances no penalty can be levied u/s 271C'. In this regard the learned counsel for the Assessee placed reliance on the decisionvf the Hon'ble Karnataka High Court in the case of CIT v. Ankita Electronics Pvt. Ltd. 379 ITR 50 (Kar) wherein it was held that the admission of substantial question of law by the High Court lends credence to the bona fides of the assessee in his action and hence no penalty can be imposed on such additions/defaults. He also placed reliance on a decision of the Hon 'ble ITAT Jaipur Bench in the case of State Bank of India Vs. ACIT (2019) 101 taxmann.com 61 (Jaipur-Trib.) wherein on identical default of non deduction of tax at source on perquisite not exempt u/s.10(5) of the Act and imposition of penalty for such failure u/s.271C of the Act, the ITAT Jaipur deleted penalty imposed u/s.271C of the Act, observing as follows:-

"10. We also refer to Hon'ble Supreme Court decisions in case of CIT v. I.T.I. Ltd. (2009) 183 Taxman 219 (SC) and CIT v. Larsen & Toubro Ltd. [2009] 181 Taxman 71 (SC) wherein it was held that the beneficiary of exemption under section 10(5) is an individual employee. There is no circular of Central Board of Direct Taxes (CBDT) requiring the employer under section 192 to collect and examine the supporting evidence to the declaration to be submitted by an employee(s). Therefore, it was held that an assessee-employer is under no statutory obligation under the income-tax Act, 1961, and/or the Rules to collect evidence to show that its employee(s) had actually utilized the amount(s) paid towards leave' travel concession(s)/conveyance allowance.

11. *We thus find that there is nothing specific which has been provided by CBDT in its circular issued under section*

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192 for the relevant financial year. What has been reiterated is adherence to the provisions as contained in section 10(5) read with Rule 2B. Similarly, the Hon'ble Supreme Court has also held that an assessee employer is under no statutory obligation under the Income-tax Act, 1961, and/or the Rules to collect evidence to show that its employees had actually utilized the amount paid towards leave travel concession. Even though the same is not required as per decision referred supra. in the instant case, the assessee bank has been diligent, and has collected and brought on record evidence to show that its employees had actually utilized the amount paid towards leave travel concession.

At the same time, in terms of adherence to the provisions as contained in section 10(5) read with Rule 2B, we find that the assessee bank has allowed exemption to all its employees who have submitted LFC claim. The Revenue has not disputed the LFC claim in respect of these employees except in respect of 12 employees. These 12 employees, who have travelled to foreign countries as part of their travel itinerary with designated place of travel in India, and in respect of which they have submitted their LFC claim, has been disputed by the Revenue as not eligible for exemption under section 10(5) in respect of amount reimbursed towards foreign leg of their travel. the explanation of the assessee bank is that while calculating the tax liability of its employees, the figure of LFC was always exempted and this rule was being followed since many years, being in a nature of thumb rule and TDS exemption of LFC was thus allowed almost mechanically year after year. To our mind, it is important to be consistent but at the same time, one needs to be mindful of what been submitted by the employees towards their LFC claims. It appears that the assessee bank has looked at these 12 employees' claim broadly, as in other cases, in terms of actual travel being undertaken, the designated place being in India and the amount of claim not exceeding the economy fare of the national carrier by the shortest route to the place of destination. However, the

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Revenue's case is that what the assessee bank has failed to consider is that the travel plan includes the foreign leg of travel and corresponding travel expenses which is not eligible for exemption under section 10(5) of the Act. However, the assessee's bank explanation to this effect is that section 10(5) and Rule 2B doesn't place a bar on travel to a foreign destination during the course of travel to a place in India and there is nothing explicit provided therein to prohibit such travel in order to deny the exemption. Having considered the rival submissions and facts on record, we are of the opinion that the assessee bank has undertaken reasonable steps in terms of verifying the assessee's claim towards their LFC claims and is aware of employees travelling to foreign countries as part of their travel itinerary but at the same time, there is an error of judgment on part of the assessee bank in understanding and applying the provisions of section 10(5) of the Act. Therefore, we are unable to accept the Revenue's contention that the assessee bank has not deducted the tax intentionally, fully knowing that the LFC is applicable for travel in India only and no foreign travel is allowable as it is a case of error of judgment and no malafide can be assumed on part of the bank. Further,nothing has been brought on record which in any ways suggest connivance on part of the assessee bank or forged claims submitted by the employees and which has been discovered by the Revenue during the course of its examination. As fairly submitted by the assessee bank, while calculating the estimated tax liability of its employees, it always consider LFC claim as exempt under section 10(5)andthe same position, being followed and accepted consistently in the past years, was followed in the current financial year as well. However, for the first time, after the survey by the tax department, this issue arose for consideration and after thejudgment of the Tribunal, the matter got clarified and the assessee bank has duly complied and deposited the outstanding demand along with interest and has taken corrective steps in subsequent years as well.

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13. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that there was reasonable cause in terms of section 273B of the Act for not deducting tax by the assessee Bank. In the result, the penalty'so levied under section 271C is hereby directed to be deleted."

12. The learned DR relied on the order of C1T(A) and further drew our attention to a decision of 1TAT Bangalore Bench in the case of another branch of the Assessee in ITA No.532 to 536/Bang/2019 order dated 12.7.2019, wherein this Tribunal remanded the question of imposition of penalty to the CIT(A) for fresh consideration to see parity of facts between the case of the Assessee and the decision of ITAT Jaipur Bench in the case of State Bank of India (supra).

We have carefully considered the rival submissions. It is undisputed that as against the order of the Tribunal holding the Assessee to be in default for non deduction of tax at source, the Assessee has preferred appeal before the Hon'ble Karnataka High Court and the question whether the Assessee is guilty of non deduction of tax at source or not is to be decided in such appellate proceedings. In this background of facts, the question is whether penalty can be imposed on the Assessee u/s.271C of the Act. The Hon 'ble Karnataka High Court in the case of Ankita Electronics Pvt.Ltd. (supra) had an occasion to deal with identical issue and the Court held as follows:-

"6. While dismissing the appeal, the Tribunal has observed that the additions in respect of which penalty under Section 271(1)(c) of the Act was levied, have been admitted by the High Court for consideration and thus found that the additions made were debatable and would lead credence to the bonafides of the assessee. It thus held that the matter of imposing penalty under Section 271(1)(c) of the Act, was not exigible in the case on hand.

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7. The Tribunal placed reliance on decision of the 'TAT, Mumbai in the case of Nayan Builders & Developers (P.) Ltd. v. ITO [IT Appeal No. 2379/Mum/2009, dated 18-3-2011], which had also held that "the admission of substantial questions of law by the High Court lends credence to the bona fides of the assessee in claiming deduction. Once it turns out that the claim of the assessee could have been considered for deduction as per a person properly instructed in law and is not completely debarred at all, the mere fact of confirmation of disallowance would not per se lead to the imposition of penalty."

8. The assessee in the present case had disclosed all the materials on which it was claiming deduction. The matter as to whether the deduction was to be given or not, was taken up by the revenue authorities and it was held that certain deductions claimed by the assessee were to be disallowed. It is not disputed that the questions regarding the disallowance of the deductions claimed by the assessee is under consideration by the High Court, as the appeal filed by the assessee has been admitted,on the substantial questions of law which have been reproduced hereinabove.

9. The mere admission of the appeal by the High Court on the substantial questions of law as have been quoted above, would make it apparent that the additions made were debatable. The Tribunal has thus rightly held that the admission of substantial questions of law by the High Court leads credence to the bona fide of the assessee and therefore, the penalty is not exigible under Section 271(1)(c) of the Act. Merely because the claim of the assessee has been rejected by the revenue authorities would not make the assessee liable for penalty."

14. In the light of the aforesaid decision qf the Hon 'hle Karnataka High Court, we are of the view that let) of penalty u/s.271C of the Act, in the given facts and circumstances of the case, cannot he sustained and the same is directed to be deleted."

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Respectfully following ratio of the co-ordinate bench decision, we hold that there is a Reasonable cause in the present case. Hence, penalty u/s 271C is not sustainable. Accordingly, we direct the AO to delete the penalty and allow the grounds of appeal of the assessee.

8. Since the facts are identical, following the order passed by the coordinate bench, we hold that there is a reasonable cause on the part of the assessee in not deducting TDS on the LTC payments made towards foreign travel. Accordingly we hold that penalty u/s 271C is not sustainable. Accordingly we set aside the order passed by the ld CIT(A) and direct the AO to delete the penalty levied u/s 271C of the Act for the year under consideration.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on **28th February 2020.**

Sd/-	**Sd/-**
(N.V Vasudevan)	**(B.R Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated, 28th February, 2019.

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1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

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2. Date on which the typed draft is placed before the dictating Member …….
3. Date on which the approved draft comes to Sr.P.S ……
4. Date on which the fair order is placed before the dictating Member ……..
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