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

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

ITA Nos.	A.Y.	APPELLANT(S)	VS.	RESPONDENT
402 to 404 / Bang/2020	2011-12 to 2013-14	M/s. Canara Bank (Erstwhile Syndicate Bank), FM Wing, Canara Bank, Head office, 112, J C Road, Bangalore – 560 002. **TAN : BLRS 14425F** **PAN: AAACC 6106G**		The Assistant Commissioner of Income Tax (TDS), Range 3, Bangalore.

Appellant by	:	Mr. S. Ananthan & Ms. Lalitha Rameswaran, CAs
Respondent by	:	Ms. R. Premi, JCIT SR.DR(ITAT), Bengaluru.

Date of hearing	:	01.10.2020
Date of Pronouncement	:	05.10.2020

O R D E R

Per N.V. Vasudevan, Vice President

These are all appeals by the Assessee, a nationalised bank, carrying on banking business against different orders of respective CIT(Appeals), Bengaluru, relating to Assessment years 201-12 to 2013-14 arising out of common order dated 31.10.2019. The issue involved in all the appeals are common and deal with the only issue of validity of imposition of penalty on the Assessee u/s.271-C of the Income Tax Act, 1961 (Act). The issue arises under identical facts and circumstances and the reasoning for levying penalty and the arguments of the Assessee for

not levying penalty are identical in all these cases. These cases were heard together and we deem it convenient to pass a common order.

2. At the time of hearing, both the parties agreed that identical issue came up for consideration before this Tribunal in ITA Nos. 651 to 656/Bang/2019 in the case of Syndicate Bank, Koramangala, Yelhanka and Ganganagar Branches, Bangalore, vide order dated 19.07.2019, the appeals of the assessees were allowed deleting the penalty imposed u/s. 271C of the Income Tax Act, 1961 (Act) under similar facts and circumstances as in the present cases before us. The relevant observations in the aforesaid decision are as follows:-

> **"2. Leave Travel Allowance (LTA)** is the most common element of compensation adopted by employers to remunerate employees due to the tax benefits attached to it. LTA is the remuneration paid by an employer for Employee's travel in the country, when he is on leave with the family or alone. LTA amount is tax free. Section 10(5) of the Income-Tax Act, 1961, read with Rule 2B (Commonly known as LTA Rules), provides for the exemption and outlines the conditions subject to which LTA is exempt. As per LTA Rules, LTA exemption can be claimed where the employer provides LTA to employee for leave to any place in India taken by the employee and their family. Such exemption is limited to the extent of **actual travel costs** incurred by the employee. **Travel within India** only allowed- As per LTA Rules, travel has to be undertaken within India and **overseas destinations are not covered for exemption**. Sec.10(5) of the Act reads thus:-
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> "Section: 10 (5) in the case of an individual, the value of any travel concession or assistance received by, or due to, him,—
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> (*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 :

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.

Explanation.—For the purposes of this clause, "family", in relation to an individual, means—

(*i*) the spouse and children of the individual ; and

(*ii*) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual;

3. Rule 2B of the Income Tax Rules, 1961 **lays down the conditions for the purpose of section 10(5)** and it reads thus:

"2B. (1) The amount exempted under clause (*5*) of section 10 in respect of the value of travel concession or assistance received by or due to the individual from his employer or former employer for himself and his family, in connection with his proceeding,—

(*a*) on leave to any place in India;

(*b*) to any place in India after retirement from service or after the termination of his service,

shall be the amount actually incurred on the performance of such travel subject to the following conditions, namely:—

(i) where the journey is performed on or after the 1st day of October, 1997, by air, an amount not exceeding the air economy fare of the national

carrier by the shortest route to the place of destination;

(ii) where places of origin of journey and destination are connected by rail and the journey is performed on or after the 1st day of October, 1997, by any mode of transport other than by air, an amount not exceeding the air-conditioned first class rail fare by the shortest route to the place of destination; and

(iii) where the places of origin of journey and destination or part thereof are not connected by rail and the journey is performed on or after the 1st day of October, 1997, between such places, the amount eligible for exemption shall be :—

(a) where a recognised public transport system exists, an amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination; and

(b) where no recognised public transport system exists, an amount equivalent to the air-conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail.]

(2) The exemption referred to in sub-rule (1) shall be available to an individual in respect of two journeys performed in a block of four calendar years commencing from the calendar year 1986 :

[**Provided** that nothing contained in this sub-rule shall apply to the benefit already availed of by the assessee in respect of any number of journeys performed before the 1st day of April, 1989 except to the extent that the journey or journeys so performed shall be taken into

account for computing the limit of two journeys specified in this sub-rule.]

(3) Where such travel concession or assistance is not availed of by the individual during any such block of four calendar years, an amount in respect of the value of the travel concession or assistance, if any, first availed of by the individual during first calendar year of the immediately succeeding block of four calendar years shall be eligible for exemption.

Explanation : The amount in respect of the value of the travel concession or assistance referred to in this sub-rule shall not be taken into account in deter-mining the eligibility of the amount in respect of the value of the travel con-cession or assistance in relation to the number of journeys under sub-rule (2).]

[(4) The exemption referred to in sub-rule (1) shall not be available to more than two surviving children of an individual after 1st October, 1998 :

Provided that this sub-rule shall not apply in respect of children born before 1st October, 1998, and also in case of multiple births after one child."

4. The Assessee as an employer was bound to deduct tax at source in cases where the LTA is not exempt i.e. in a case where the conditions laid down in Sec.10(2) read with Rue 2B of the Rules are not satisfied. The Assessee in these appeals reimbursed leave travel allowances to its employees in respect journey undertaken out of India. In respect of such reimbursement it did not deduct tax at source. According to the bank, if the destination is India, irrespective of the en-route journey, it need not deduct tax at source as the reimbursement of LTA was exempt u/s.10(5) of the Act.

5. A survey was conducted u/s.133A of the Act in the business premises of the Assessee and it was noticed that the Assessee did not deduct tax at source on LTA reimbursement even when the travel was out of India to a destination in India through a long circuitous route. The Act mandates that a specified percentage of Tax is required to be deducted by the payer at the time of making certain payments to the payee. The requirement to deduct tax is there for payments such as payment of Commission, interest, salary, royalty, contract payment, brokerage etc. The non exempt LTA will be in the nature of salary and

the Assessee ought to have deducted tax at source and the Assessee failed to do so under the impression that if the destination is India, irrespective of the fact that en-route the journey is out of India, the entire LTA is exempt. The Department however took a contrary view and held that when the travel is outside India irrespective of the fact that the ultimate destination is India, Tax ought to have been deducted at source. The Assessee was accordingly proceeded u/s.200(1) & 200(1A) of the Act for failure to deduct tax at source and was held to be an Assessee in default in respect of taxes not deducted at source and also liable for interest on such tax not deducted at source and paid to the Government, from the date on which it ought to have been deducted and paid to the Government till the date on which the same is paid to the credit of the Central Government. Over and above the obligation u/s.200 of the Act, the Assessee is also liable for imposition of penalty u/s.271-C of the Act for the failure to deduct Tax at source. The provisions of Sec.271-C reads thus:-

> "Section: 271C.
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> 1) If any person fails to—
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> a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVIIB; Or
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> b) pay the whole or any part of the tax as required by or under—
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> i. sub-section (2) of section 115-O; or
> ii. the second proviso to section 194B,
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> then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.
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> 2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

6. However, Section 273B of the Act provides that in case the payer proves to the revenue department that there was some reasonable cause for the failure to deduct tax then the penalty under Section 271C is waived off. Sec.273-B reads thus:-

> "Section 273B - Penalty not to be imposed in certain cases, can be read as follows:

273B. **Notwithstanding anything contained** in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B , section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, section 271H, clause (c) or clause (d) of sub section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or subsection (1) or subsection (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of subsection (2) of section 273,**no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."**

7. There is no definition for the term reasonable cause and it has to be decided upon the facts of each case. The Hon'ble Supreme Court of India made the following observation in the Case of *CIT, New Delhi Vs. M/s Eli Lilly & Company (India) Pvt. Ltd. & Ors., CIVIL APPEAL No. 5114/2007, Order dated 25th March, 2009,* with regard to reasonable cause for failure to deposit TDS:-

"(iv) On the Scope of Section 271C read with Section 273B:

35. Section 271C inter alia states that if any person fails to deduct the whole or any part of the tax as required by the provisions of Chapter XVII-B then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct. In these cases we are concerned with Section 271C(1)(a). Thus Section 271C(1)(a) makes it clear that the penalty leviable shall be equal to the amount of tax which such person failed to deduct. We cannot hold this provision to be mandatory or compensatory or automatic because under Section 273B Parliament has enacted that penalty shall not be imposed in cases falling thereunder. Section 271C falls in the category of such cases. Section 273B states that notwithstanding anything contained in Section 271C, no penalty shall be imposed on the person or the assessee for failure to deduct tax at source if such person or the assessee proves that there was a reasonable cause for the said failure. Therefore, the liability to levy of penalty can be fastened only on 44 the person who do not have good and sufficient reason for not deducting tax at source. Only those persons will be liable to penalty who do not have good and sufficient reason for not

deducting the tax. The burden, of course, is on the person to prove such good and sufficient reason. In each of the 104 cases before us, we find that non-deduction of tax at source took place on account of controversial addition. The concept of aggregation or consolidation of the entire income chargeable under the head "Salaries" being exigible to deduction of tax at source under Section 192 was a nascent issue. It has not be considered by this Court before. Further, in most of these cases, the tax-deductor-assessee has not claimed deduction under Section 40(a)(iii) in computation of its business income. This is one more reason for not imposing penalty under Section 271C because by not claiming deduction under Section 40(a)(iii), in some cases, higher corporate tax has been paid to the extent of Rs. 906.52 lacs (see Civil Appeal No. 1778/06 entitled CIT v. The Bank of Tokyo-Mitsubishi Ltd.). In some of the cases, it is undisputed that each of the expatriate employees have paid directly the taxes due on the foreign salary by way of advance tax/self-assessment tax. **The tax-deductor-assessee was under a genuine and bona fide belief that it was not under any obligation to deduct tax at source from the home salary paid by the foreign company/HO and, consequently, we are of the view that in none of the 104 cases penalty was leviable under Section 271C as the respondent in each case has discharged its 45 burden of showing reasonable cause for failure to deduct tax at source**."

8. The Hon'ble Karnataka High Court made the following observation in the Case of The Commissioner of Income Tax and Others Vs. The Rajajinagar Co-operative bank Limited ITA 86 of 2006, Order Date 20th July, 2011, with regards to reasonable cause for failure to deposit TDS:-

"10. **In the instant case, the assessee is a Cooperative Bank. Clause 5 of sub-section (3) of Section 194A expressly exempts the Bank from deducting the tax at source on interest payable by the Bank to its members and other Cooperative Societies. As stated by the assessee, they did not properly construe this provision. By mis-construing this provision they also did not deduct tax from the interest payable to nonmembers. That is the bonafide mistake which they have committed. Their bonfides is demonstrated to the effect that once in a survey the said mistake was notice and pointed out immediately they have paid the tax**

with interest. Therefore, in the light of this undisputed facts of this case, when the Appellate Commissioner and the Tribunal held that the same constitutes a reasonable cause and when the same is not shown to be false, the assessee has satisfied the requirement of Section 273- B, in which event, no penalty shall be imposable. Therefore the order passed by the Tribunal and the appellate Commissioner is valid and legal and do not suffer from any legal infirmity which calls for interference. Accordingly the substantial question of law framed is answered in favour of the assessee and against the Revenue."

(emphasis supplied)

9. In the present case, the Assessee was held to be an Assessee in default and orders u/s.200(1) & 200(1A) of the Act by the AO and the CIT(A). The Hon'ble ITAT has also confirmed the orders of the revenue authorities on this issue. The Assessee is in appeal before the Hon'ble Karnataka High Court against the said orders and the Hon'ble Karnataka High Court in ITA No.634/2017 by order dated 22.11.2018 admitted the appeal framing the following substantial question of law:-

(i) Whether the Tribunal was justified in holding that for the purposes of exemption under section 10(5) of the Act, travel by the employees would only have to be within India, without appreciating that the said provision does not prohibit travel outside India but only limits the exemption available to the employees under the said provision to reimbursements for travel within India?

(ii) Whether the Tribunal was justified in holding that the Appellants were assessee-in-default under section 201 of the Act for short deduction of taxes at source under Section 192 of the Act, when the said provision only envisages a fair estimate of the income of the employees and not mathematically precise computation by the employer for the purposes of tax deduction at source?

10. The Revenue authorities proceeded to impose penalty u/s.271C on the Assessee rejecting the plea of the Assessee that the failure to deduct tax at source was on a reasonable belief that Assessee failed to do so under the impression that if the destination is India, irrespective of the fact that en-route the journey is out of India, the entire LTA is

exempt. Aggrieved by the orders of the CIT(A) the Assessee is in appeal before the Tribunal.

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

12. 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 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)and the 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 the judgment 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.

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 CIT(A) and further drew our attention to a decision of ITAT 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)*.

13. 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 ITAT, 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."
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> **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.
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> **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 of the Hon'ble Karnataka High Court, we are of the view that levy of penalty u/s.271C of the Act, in the given facts and circumstances of the case, cannot be sustained and the same is directed to be deleted.

15. As far as the decision of the co-ordinate Bench in the case of *Syndicate Bank (supra)* is concerned, we are of the view that this issue has not been raised nor considered in that case. Since the imposition of penalty u/s.271C fails on this ground, we are of the view that there is no necessity to remand the issue to CIT(A) for consideration afresh, as was done by the Tribunal in the case referred to by the learned DR. We therefore hold that the imposition of penalty in the facts and circumstances of the case cannot be justified and the same is directed to be cancelled."

3. We are of the view that the facts and circumstances under which penalty u/s. 271C of the Act was imposed in the present appeals are similar to the facts and circumstances in the aforesaid decision of the Tribunal. Therefore, following the same, the penalty levied u/s. 271C of the Act in the cases now before us is deleted.

4. In the result, all the appeals by the assessees are allowed.

Pronounced in the open court on this 5th day of October, 2020.

Sd/-	Sd/-
(B R BASKARAN)	(N V VASUDEVAN)
ACCOUNTANT MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 5th October, 2020.
/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.