

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2290/Ahd/2017
Assessment Year: 2011-12**

Shri Rajeshkumar Navnital Dani C-9, Navyung Society Opp. Navyung School New Sama Raod Nr. Ayyappa Temple Vadodara PAN No. ABL PD3 945 P (Appellant)	Vs	ITO Ward-4(2)(1), Vadodara (Respondent)
---	----	--

**ITA No. 1417/Ahd/2017
Assessment Year: 2012-13**

Shri Pinakin Snehchandra Shah 9, Shantivan Park Soc, OP Road B/h Lion’s Hall Vadodara- 390001 PAN No.AEV PS0 745 K (Appellant)	Vs	ITO Ward- 4(2)(2) Vadodara (Respondent)
--	----	--

**ITA No. 1618/Ahd/2018
Assessment Year: 2010-11**

Shri Pinakin Snehchandra Shah 9, Shantivan Park Soc, OP Road B/h Lion’s Hall Vadodara- 390001 PAN No.AEV PS0 745 K (Appellant)	Vs	ITO Ward- 4(2)(2) Vadodara (Respondent)
--	----	--

ITA No. 1587/Ahd/2017 Assessment Year: 2013-14

Shri Kamlesh Bachubhai Desai 9, Sonal Park Nr. Mangal Mandir Soc High Tension Road, Subhanpura Vadodara- 390023 PAN: ABO PD1 658 C (Appellant)	Vs	ITO Ward-4(2)(1) Vadodara (Respondent)
---	----	---

Revenue by: Shri Sunil Jalati, AR
Assessee by: Shri Richa Rastogi, Sr. DR

Date of hearing : 04-04-2019
Date of pronouncement : 10-04-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

All the above four appeals are filed by different assesses against the order of Ld. CIT(A), Vadodara-4 on identical issues and similar facts, therefore, for the sake of convenience all these three grounds of appeals are adjudicated together by this common order. Since the identical issues are involved on similar facts in all these appeal, therefore, for adjudicating these appeals we take ITA No. 2290/Ahd/2017 in the case of Shri Rajeshkumar Navnitlal Dani as a lead case and our finding of this case to be applied to the remaining three cases.

The assessee has filed the following grounds of appeal:-

“1. The order passed by the Learned CIT (A) - 4 Vadodara, is bad in law, contrary to legal pronouncements and same be quashed. The disallowances/additions are unwarranted and same be deleted now.

2. Your appellant submits that the provisions of section 147 r.w.s. 148 are not applicable in the case of your appellant since the reasons recorded for re-opening

the assessment are not valid as per law. It be held so now and order passed by AO be quashed.

3. The Learned CIT (A) - 4 Vadodara, has erred in upholding the disallowance of Rs 4,06,452/- made by the AO on account of Leave Travel Concession claimed by the Assessee by virtue of section 10(5) of the Act. The Learned CIT(A) - 4 has erred in not appreciating the facts that the Assessee has claimed LTC u/s 10(5) to the extent of travel within India(Andaman & Nicobar). It may be appreciated that Andaman and Nicobar is part of India and hence the tour taken by the Appellant be considered as Travel within India. It is therefore submitted that the Hon CIT(A)-4, Vadodara has wrongly confirmed the disallowance made by AO. The Claim being rightly made, the AO be directed to allow the same.

4. The Ld. CIT(A)-4 Vadodara, has erred in confirming the charging of interest under section 234A/B/C/D. It be held so now and same be deleted.”

2. The brief fact of the case is that assessee was an employee of Bank of Baroda (Senior Branch Manager) and derived income from salaries. As per the information available with the AO for the Financial Year 2010-11 the assessee has availed LTC which has also covered journey to foreign destinations. The reimbursement of such claim of LTC was not offered for tax by the assessee, therefore, the case of the assessee was reopened after recording reasons thereof and proceedings were initiated under the provision of Sec. 147 of the Act by issuing of notice u/s. 148 of the act on 23.09.2014. The assessee has submitted that he has not claimed any amount towards his foreign travel and his foreign travel does not form part of LTC claim.

The AO has not accepted the explanation of the assessee and he was of the view that travelling to foreign destination while availing LTC was not consistent with the provisions of Sec. 10(5) of the Act. Therefore a show cause notice was issued by the AO which is reproduced as under:-

"In this connection, I would like to mention the provisions of section 10(5) of the Act which reads as under:

[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 the conditions as may be prescribed under Rule 2B of the Income-tax Rules having regard to the travel concession or assistance granted to the employees.

Provided that the amount exempt under this clause shall in no case exceed the amount of expense 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 the 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;]*

4. In your case, it is seen that your journey also included travelling at foreign destinations which is not in consistent with the provisions of sec. 10(5) of the Income-tax Act, 1961. The plain reading of sec. 10(5) of the Act and Rule 2B of the Income-tax Rules in no way provided that the assessee is at liberty to claim exemption out of his ticket package spent on his overseas travel and part of the journey being undertaken within India. As such an amount of L.T.C./L.F.C./L.T.A. has been wrongly claimed as an exempt. You are, therefore, requested to show cause as to why the said amount of Rs.4,06,452/- claimed by you as an exempt should not be disallowed and added to your total income for that assessment year?"

3. The assessee has explained that his claim of LTC of Rs. 4,06,452/- was exempted u/s. 10(5) of the Act since he has not claimed any amount toward his journey to foreign destinations. He has further explained that as per provisions of sec. 10(5) of the Act r.w.r 2B of the Rules no disallowance shall be made for his claim of LTC. The AO has not accepted the claim of the assessee. He has referred sec. 10(5) of the I.T. Act and Rule 2B of the I.T. Rule and stated that the claim of exemption is available for performing of LTC to any place in India and not for travelling to foreign destinations. Consequently the AO has disallowed the claim of LTC amounting to Rs. 4,06,452/- as exempt u/s. 10(5) of the Act and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A) the Ld. CIT(A) has dismissed the appeal of the assessee. The relevant part of the decision of the CIT(A) is reproduced as under:-

"4.3. I have carefully considered the order of the Assessing Officer that "As per the provisions of section 10(5) of the Act only that reimbursement of travel concession or assistance to an employee is exempted which is incurred for travel of the individual employee or his family members to any place in India. It is nowhere stated that even if the employee travels to foreign countries, exemption would be limited to the expenditure incurred to the last destination in India. The said provision was introduced to motivate the employees and also to encourage tourism in India and, therefore, the reimbursement of LTC 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.

4.4. The said provision was introduced to motivate the employees and also to encourage tourism in India and, therefore, the reimbursement of LTC 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, Provisions of Rule 2B(1)(a)(b) have been elaborated in section 10(5) as under:

(1) The amount exempted under douse (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

4.5. Provisions of section 10(5) read with Rule 2B(1) envisage that amount received by an individual on account of value of travel concession is exempt only if the employee is proceedings on leave to any place in India, Section 10(5) as well as the relevant rule 2B do not stipulate that journey to any place in India would be made via a place outside India The intention of the legislature was certainly nor to grant: exemption for reimbursement of the value of LTC in a case where was performed via a foreign country. In fact, the national carrier i.e. Air India/Indian Airlines had also been offering LTC packages to various destinations in India and allowing passengers to visit the foreign countries at the full fare chargeable to the final destination in India and it was clearly mentioned on the website (of Air India/Indian Airlines) that the value of LTC was chargeable to income tax.

4.6. The contention of the appellant that the Assessing Officer had overlooked the fact that Rule 2B of Income Tax Act, 1962 only stipulated that the amount of LTC shall not exceed the fare charged by the national carrier for the shortest route is not relevant in the present case. Similarly, the contention of the appellant that the rules of the bank permit the appellant to take circuitous route even involving foreign journey is also irrelevant. The Assessing Officer had only held that amount is not exempt u/s 10(5) of Income Tax ACT, 1961. In view of the above discussion, it is held that the value of LTC received by the appellant is not exempted u/s 10(5) of the Income Tax Act, 1961.

*4.7. On identical facts ITAT, Chandigarh vide ITA No.938/Chd/2011 in the case of **Shri Om Parkash Gupta VS ITO Wd.4(1), Chandigarh** has dismissed the*

appeal of the assessee rejecting the claim of the assessee of exemption u/s.10(5) of the Act. In view of the above, it is held that the value of LTC received by the appellant is not exempt u/s.10(5) of the income-tax Act, 1961, it is held that the Assessing Officer has rightly made addition u/s.10(5) and Rule 2B of the income-tax and the same is upheld. The sole ground of appeal is dismissed.

5. The third ground of the appeal is as under:

"3. The learned AO has grossly erred in charging interest u/s 234B and 234C of the Act. It is submitted that the levy of interest is incorrect and same be deleted now. Further the AO has also initiated penalty proceedings u/s 271(l)(c) of the Act which is against the law."

5.1 The Authorized Representative has made written submission as under:-

"Ground 3: Charge of interest u/s 234B & 234C and levy of penalty: The learned AO has charged interest u/s 234B and 234C of the Act. It is submitted that the levy of interest is incorrect and same be deleted now.

Further the learned AO has erred in initiating penalty proceedings u/s 271(1)(c) of the Act. It is submitted that the initiation of penalty is incorrect since there is neither any concealment nor any inaccurate particular of income has been filed. It be held so now and AO be directed to drop the proceedings.

*5.2 The charging of interest is mandatory in view of Hon'ble Supreme Court decision in the case of **Anjum M H Ghaswala 252 (2001) ITR 1 (SC)** hence, this ground of appellant fails.*

5.2.1 Since no appeal lies against initiation of penalty u/s. 271(1)(c) hence this ground fails.

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

5. We have heard the rival contention and perused the material on record carefully. The first ground of appeal of the assessee stating that order passed by the Ld. CIT(A) for Vadodara is bad in law is general in nature and therefore the same is not required to be adjudicated.

In the second ground of appeal of the assessee has stated that provisions of sec. 147 r.w.s. 148 are not applicable since the reasons recorded for reopening the assessment are not valid as per law. On this issue we have perused the material on record and it is noticed that AO has reopened the case of the assessee on the ground that while availing LTC the assessee has also performed journey to foreign destination and such kind of LTC is not exempt u/s. 10(5) of the Act. The reimbursement of such claim of LTC was not offered for tax by the assessee,

In the light of the above fact and circumstances we do not find merit on this ground of appeal of the assessee that provision of sec. 147 r.w.r. 148 are not

applicable in the case of the assessee . The assessee has also failed to substantiate how the reason recorded for reopening assessment were not valid. Therefore, we do not find any merit in this ground of appeal of the assessee. Accordingly, this ground of appeal of the assessee stand dismissed.

The ground no. 3 of the assessee is against the decision of Ld. CIT(A)-4 Vadodara in upholding the disallowance of Rs. 4,06,452/- made by the AO on account of Leave Travel Concession claim by the assessee by virtue of sec. 10(5) of the Act. With the assistance of the Ld. Representative we have perused the material on record. The assessee has stated that as per scheme of the travel journey a complementary journey was awarded to visit a place outside India started from Mumbai and come back to Mumbai. However, no amount has been charged as it was complementary in nature. Hence, it was not form part of LTC claim. We have gone through the application of the assessee for the reimbursement of LTC claim and it is noticed that assessee has performed the journey at the time of LTC as under:-

Sr. No.	Date of commencement of journey	From	To	Mode	Class of Travelling
1.	24.10.2010	Baroda	Bombay	Flight	Economy
2.	25.10.2010	Bombay	Calcutta	Flight	Economy
3.	25.10.2010	Calcutta	Port Blair	Flight	Economy
4.	26.10.2010	Port Blair	Calcutta	Flight	Economy
5.	26.10.2010	Calcutta	Bombay	Flight	Economy
6.	26.10.2010	Mumbai	Singapore	Flight	Economy
7.		Singapore	Kualalumpur	Bus	
8.	01.11.2010	Kualalumpur	Bangkok	Flight	Economy
9.	05.11.2010	Bangkok	Mumbai	Flight	Economy
10	05.11.2010	Mumbai	Baroda	Flight	Economy

We find that as per provision of sec. 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 and nowhere in this clause it had been stated that even if the employee travel to foreign countries, exemption would be limited to the expenditure incurred to the last destination in India. On identical facts and similar issue in proceedings under section 201(1) &201(IA) of the act the relevant part of the decision of the ITAT Lucknow in the case of the State Bank of India Vs. DCIT(TDS) vide 67 taxmann.com 81 is reproduced 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.”

We have also gone through the provisions of sec. 10(5) of the Act reproduced 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 prescribed² (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;]”

7. On perusal of this section we are of the view that 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 with in India. In view of the above facts and provision of law we do not find any infirmity in the decision of Ld. CIT(A) therefore, the appeal of the assessee is dismissed. Applying the findings of this case to the other three cases the appeal of the assessee vide ITA Nos. 2290/Ahd/2017, 1417/Ahd/2017, 1618/Ahd/2018 & 1587/Ahd/2017 are also stand dismissed.

The ground no. 4 of the assessee is regarding charging of interest u/s. 234 A/B/C/D stands dismissed as the charging of interest is mandatory as per the provisions of law under the aforesaid sections.

8. In the result, all four appeals are dismissed.

Order pronounced in the open court on 10-04-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad : Dated 10/04/2019

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

TRUE COPY

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद