IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2378/Bang/2019
Assessment Year : 2012 – 13

State Bank of India, Centralized Clearing Processing Center, 1st Floor, A Block, BKG Complex, E SBM Head Office Campus, K.G Road, Bengaluru-560 009. **PAN – BLRS 36558 E**	**Vs.**	The Addl. Commissioner of Income-tax, TDS Range - 3 Bengaluru.
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Muralidhara H, C.A
Respondent by	:	Shri Manjeet Singh, Addl. CIT

Date of Hearing	:	23-06-2020
Date of Pronouncement	:	30-06-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 09/09/2019 passed by Ld. CIT (A)-10, Bangalore for assessment year 2012-13, on following grounds of appeal:

"1. The order of Commissioner of Income Tax (Appeals) in upholding penalty levied by the learned assessing officer under section 271C, in so far it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the Appellant's case.
2. The Commissioner of Income Tax (Appeals) has grossly erred in upholding the levy of penalty u/s 271C of the Act Rs.6,62,454/- under

the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

3. The Commissioner of income Tax (Appeals) has grossly erred in upholding the levy of penalty u/s 271C of the Act without appreciating the fact that the appellant had complied with all the provisions of TDS on salaries under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

4. The Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the interpretation of provisions of Sec. 10(5) was debatable under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

5. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant did not have mala fide intention in not deducting tax at source on LTC portion of salaries under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

6. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC portion paid to employees since the same was exempted from tax u/s 10(5) of the Act (which deals with incomes which do not form part of total income) under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

7. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the appellant was only reimbursing the LTC claim and no TDS was attracted on the same under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

8. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the same methodology was being followed by the appellant for more than 2 decades under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

9. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant was under bona fide belief that there is no tax liability on LTC inasmuch as the appellant was being guided by Indian Bank Association and the appellant had all along been followed the same principle without any change under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

10. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act without appreciating the fact that the appellant had reasonable cause for not deducting impugned tax at source under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside

11. Without prejudice to the above, the Commissioner of Income Tax (Appeals) has grossly erred in upholding penalty u/s 271C of the Act and further erred in not considering the appellant's claim that the appellant was eligible to be sheltered u/s 273B of the Act for having reasonable cause for not deducting impugned tax at source under the facts and circumstances of the case and thereby appellate order sustaining penalty is liable to be set aside.

12. For these and such other grounds as maybe raised by the appellant during the course of appellate proceedings, appellant hereby humbly prays before this Hon'ble Tribunal to allow the appeal of the appellant in the interest of equity and advancement of substantial cause of justice in the eyes of law."

Brief facts of the case are as under:

2. Assessee is a banking institution and the survey under section 130A of the Act was conducted ON 26/12/2013, to verify compliance of TDS. During the course of survey, Ld.AO noticed that, assessee paid reimbursement of leave travel concession to its employees, even in cases where foreign destination was included in the itinerary of such employees. Ld.AO noted that, such reimbursements was made without deducting TDS, and amount paid on foreign travel was treated as exempt under section 10(5) of the Act. As employees were allowed exemption under section 10(5) read with rule for travel outside India, assessee was treated as an assessee in default, for not making TDS from such payments, made for foreign travel and order under section 201(1) was passed raising demand of Rs.6,62,454/-. Addition made by Ld.AO under section 201(1) of

the Act was confirmed by this *Tribunal*, consequent to which, penalty under section 271C was passed by Ld.AO.

3. Aggrieved by penalty levied, assessee preferred appeal before the Ld.CIT (A).

4. Ld.CIT (A) upheld penalty, by holding that there was no reasonable cause for applicability of provisions of section 273B, and not deducting tax at source from the payment towards LTC consisting of foreign travel.

5. Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

6. At the outset, Ld.AR submitted that, identical issue has been considered by coordinate bench of this *Tribunal* by order dated 18/11/2019 in assessee's own case for assessment years 2011-12 to 2013-14 on identical issue. It has been submitted that these appeals also arose out of the same survey operation dated 26/12/2013 as in the present case.

7. Referring to paragraph 2 at page 3 of the order is, Ld.AR submitted that assessee had filed explanation by letter dated 09/11/2017 explaining reasons and reasonable cause to support the sufficient cause, however, Ld.AO is did not consider the same.

8. Ld.AR submitted that assessee was under bona fides belief and view that there is no liability for assessee to deduct TDS on LTC reimbursement which included foreign travel, made to its employees since the same was covered and exempted under Section 10 (5) read with Rule 2B of Rules. It was submitted by assessee is that it being a nationalised bank and government of India undertaking has been following the same procedure for

calculation of taxability of salaries paid to its employees for past many years without any change in method/principles which has been accepted by the revenue authorities all along.

9. It has been submitted that, this *Tribunal* deleted penalty, by relying on decision by coordinate bench of this *Tribunal* in case of *Syndicate Bank vs ACIT in ITA No. 651 to 656/B/2019 dated 19/07/2019*

10. It has been submitted that, assessee paid entire demand under section 201 (1) and 201 (1A) of the Act.

11. On the contrary, Ld.Sr.DR placed reliance upon orders passed by authorities below.

12. We have perused submissions advanced by both sides in light of records placed before us. We have also perused decision of assessee's own case dated 18/11/2019(supra), relied upon by Ld.AR, wherein identical issue has been dealt with and decided as under:

> *5. We heard rival submissions and perused material on record. Prima fade, the sole disputed issue 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 a.ssessee 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 656/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:*
>
> *11. The learned counsel for the .4ssessee submitted that when the Hon h/c 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 'b/c Karnataka High Court in the case of ('IT 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 acsessee in his action and hence no penalty can he 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. coin 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. 12009] 183 Taxman 219 (SQ and CIT v. Larsen & Toubro Ltd 120091 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 assesseee- 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 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 actual/v 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 n 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 eases. 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 p/ace of destination. However, the Revenues ease 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 bank explanation to this effect is that section 10(5) and Rule 28 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 hank 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 tire unable to accept the Revenues 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 hank. 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 departments 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 afflicts and

circumstances of the case, we are of the considered view that there was reasonable cause in terms of section 2738 of the Act for not deducting tax by the assessee Bank. In the result, the penalty's levied under section 271C is hereby directed to be deleted."

13. It is noted that, this *Tribunal* while deciding identical issue in case of *Syndicate Bank vs ACIT (supra)*, placed reliance on decision of *ITAT Jaipur Bench* in case of *State Bank of India vs ACIT* reported in *(2019) 101 Taxmann.com 61* (emphasis supplied to para 10-13 in the above reproduction).

14. On totality of present facts, reasonable cause expressed by assessee before authorities below and the view taken by *ITAT Jaipur Bench in assessee's own case(supra)*, which was relied on by coordinate bench of this *Tribunal* in case of *Syndicate Bank vs ACIT (supra)* on identical issue is, we do not find any reason to uphold penalty levied by Ld.AO under section 271C of the Act. We therefore direct Ld.AO to delete the penalty.

Accordingly grounds raised by assessee stands allowed.

In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 30th June, 2020

Sd/-	Sd/-
(B. R. BASKARAN)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 30th June, 2020.
/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	**Initial**	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-06-2020		Sr.PS
3.	Draft proposed & placed before the second member	-06-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-06-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-06-2020		Sr.PS/PS
6.	Kept for pronouncement on	-06-2020		Sr.PS
7.	Date of uploading the order on Website	-06-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-06-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS