

Note regarding recent judgements of the Supreme Court on the tax-treatment of Conveyance allowance and Leave travel concession

The Supreme Court has recently rendered a very significant judgement in the following two cases :

- (i) *CIT Vs. ITI Ltd. [2009] 18 DTR 162 (SC), and*
- (ii) *CIT Vs. Larsen and Toubro Ltd. [2009] 18 DTR 163 (SC): 313 ITR 1 (SC).*

In both the aforesaid judgements, it has been held by the Apex Court that beneficiary of exemption under section 10(5) of the Income-Tax Act, 1961 (the Act), relating to leave travel concession / assistance is the individual employee. There is no Circular of the Central Board of Direct Taxes (CBDT), requiring the employer to collect and examine the supporting evidence in respect of declaration furnished by the employee, to the effect that he has actually utilized the amounts paid towards leave travel concession / conveyance allowance, for the purposes of TDS, under section 192 of the Act.

In this connection, I have already provided opinions to most of my clients that the employer is under no obligation to verify the correctness or otherwise of the certificates / declarations furnished by the employees, to the effect that they have actually utilized the amounts paid to them, towards leave travel concession / assistance and / or conveyance allowance.

The aforesaid issues are discussed as follows :

I. Conveyance allowance

As regards conveyance allowance, the following two aspects are very important, viz :

- (i) that conveyance allowance is not a perquisite, and
- (ii) that it is not open to the Revenue, to call for the details of the expenses actually incurred.

The aforesaid aspects are discussed as follows :

1. Conveyance allowance is not a perquisite, within the meaning of section 17(2) of the Act.

As per the judgement in the case of *Owen Vs. Pook (Inspector of Taxes) [1969] 74 ITR 147 (HL)* [HL stands for the House of Lords], 'Perquisite' is a personal advantage, which will not apply to a mere reimbursement of necessary disbursement. As regards conveyance allowance, it is granted for the discharge or performance of duties of an office or employment for profit and therefore, it will not involve any personal advantage to the employee, so as to fall within the meaning of 'Perquisite', under section 17(2) of the Act. The aforesaid stand is also supported by the following judgements :

- (i) *CIT Vs. L.A. Rosemann [2000] 245 ITR 716 (Bom.), and*
- (ii) *Rajasthan State Electricity Board Vs. ITO [1994] 48 ITD 100 (Jaipur).*

2. Evidence in respect of expenses actually incurred.

The other important aspect is the requirement for the purpose of exemption under section 10(14)(i), in respect of the evidence to the effect that the aforesaid allowance has been actually spent in the performance of the duties by the employee concerned. In this regard, a Circular of the CBDT and some legal precedents are relevant, which are as follows :

(i) *Circular No.33(LXXVI-5), dated 1.8.1955.*

This is a Circular issued under the parallel provisions viz. section 4(3)(vi) of the erstwhile Indian Income-Tax Act, 1922, which is also applicable to the 1961 Act. The heading of the Circular is :

‘Special allowance or benefit being reasonable and not disproportionately high – No details of expenses actually incurred need be asked for the purpose of granting exemption under section 4(3)(vi) of 1922 Act’.

It has been laid down in the aforesaid Circular that generally speaking, where the specific allowances are reasonable with reference to the nature of the duties performed by the assessee and are not disproportionately high compared to the salary received by him, no attempt will ordinarily be made to call for details of expenses actually incurred by him, with a view to disentitling him to some extent from the exemption.

(ii) *Rajasthan State Electricity Board Vs. ITO [1994] 48 ITD 100 (Jaipur)*

In this case the Hon. Tribunal was seized of the issue of exemption under section 10(14) of the Act, in respect of special allowance in the form of orderly allowance paid to senior officers of the Rajasthan State Electricity Board.

It was held that the principal officer of the Board was not required to insist on the production of detailed account of the expenditure incurred by the officers on engaging a helper at their residences, to assist them in the discharge of their duties of their respective offices.

In view of the aforesaid reasons, a certificate by the employee that he has actually spent the conveyance allowance for the purposes of the duties of his office, should be treated as sufficient evidence for the purposes of exemption under section 10(14)(i) of the Act.

(iii) *Madanlal Mohanlal Narang Vs. ACIT [2006] 101 TTJ 1005 (Mum.)*

In this case, the Hon. Tribunal was, *inter alia*, seized of the issue regarding exemption under section 10(14), in respect of special allowance or benefit granted to the employees by the employer. The Hon. Tribunal has placed reliance on the aforesaid Circular No.33(LXXVI-5), dated 1.8.1955, of the CBDT and accordingly, it is held that it is not open to the Revenue to call for the details of the expenses actually incurred, unless the specific allowance is disproportionately high compared to the salary received

by the employee or unreasonable, with reference to the nature of the duties performed by him.

II. Leave travel concession / assistance

Almost similar is the position, in the case of leave travel concession / assistance, which is exempt under section 10(5) of the Act. In this connection, a reference may be made to the judgement in the case of *CIT Vs. Semi-Conductor Complex Ltd. [2007] 208 CTR 462 (P&H) : 292 ITR 636 (P&H)*.

In this case, the Hon. High Court was seized of the issue of exemption in respect of leave travel concession (LTC), under section 10(5) of the Act.

The Tribunal had recorded a categorical finding that the declarations filed by the employees of the assessee company, in the prescribed proforma gave full details of the journey undertaken by the employees and that the assessee had reimbursed its employees for leave travel concession, after obtaining all the information in the prescribed proforma and held that the amounts paid towards leave travel concession were entitled to exemption.

On appeal, it was held by the Hon. High Court that the aforesaid judgement of the Tribunal was quite correct in the facts and circumstances of the case.

III. Conclusion

It may, thus, be seen that the Hon. Supreme Court has, in the aforesaid two judgements, fully affirmed the aforesaid view that a declaration / certificate furnished by the employee to the effect that he has actually utilized the amounts paid towards leave travel concession / conveyance allowance, is sufficient for the purposes of TDS, under section 192 of the Act.

It is, therefore, advised that for TDS purposes, a certificate / declaration by the employee to the effect that he has actually utilized the amounts paid towards leave travel concession or conveyance allowance, is sufficient. The employer need not go into any further detail or make any further enquiry in this regard.

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(S.K.Tyagi)