

**Meaning of the term ‘leave’ under section 10(5) of the I.T. Act, 1961,
relating to LTA / LTC**

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Recently, some queries were raised by one of my clients regarding the meaning of the term ‘leave’, as used in section 10(5) of the Income-Tax Act, 1961 (the Act), relating to the exemption of the value of leave travel assistance (LTA) or leave travel concession (LTC), received by an employee. The specific queries raised were as follows :

- (i) What is the definition of ‘leave’ under section 10(5) of the Act?
- (ii) What is the minimum ‘leave’ required to claim the benefit of LTA / LTC?
- (iii) Can LTA be availed of even if the employee goes on casual leave of one day?
- (iv) Can LTA be availed of when a female employee travels to a place other than the place of her employment in connection with her maternity leave?

In order to answer the aforesaid queries, it will be necessary to consider the relevant provisions of the Income-Tax Act, 1961, (the Act), Income-Tax Rules, 1962 (the Rules), provisions of other relevant statutes and legal precedents. The same are discussed as follows :

I. Section 10(5) of the Act – Leave travel assistance / concession

The exemption in respect of the value of any leave travel assistance or leave travel concession received by an employee has been provided under section 10(5) of the Act. For the sake of ready reference, section 10(5) of the Act is reproduced as follows :

“ 10. Incomes not included in total income.

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 :

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; ”

From the aforesaid provisions of section 10(5), it may be seen that section 10(5) grants exemption in respect of the value of leave travel assistance / concession received by an employee from his employer, if certain basic conditions laid down thereunder are fulfilled.

As per the aforesaid provisions of section 10(5), the amount exempted thereunder, in respect of the value of travel assistance / concession, in connection with the employee 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 conditions listed thereunder.

From the aforesaid provisions, it may be seen that as long as an employee continues in his service, he is entitled to the aforesaid benefit under section 10(5) only when he proceeds **on leave** to any place in India.

It may, however, be seen from the aforesaid provisions of section 10(5) of the Act that the word ‘leave’ is not defined thereunder.

It may be further stated that the term ‘leave’ is also not defined under section 2 of the Act, which provides definitions of certain terms / expressions used under the Act. The term ‘leave’ is also not defined under any other provision of the Act or the General Clauses Act, 1897.

II. Rule 2B of the Rules – Conditions for the purpose of section 10(5)

It may be stated here that the conditions for the purpose of claiming the benefit under section 10(5) are prescribed under rule 2B of the Rules.

In the present context, it may be stated that even under the provisions of rule 2B, the term 'leave' has not been defined.

III. Definition of the term 'leave'

As already pointed out, the term 'leave' is neither defined under section 10(5), section 2 or even any other provision of the Act. It is also not defined under the General Clauses Act, 1897. Besides, the term 'leave' is also not defined under rule 2B of the Rules.

It will, therefore, be necessary to ascertain the meaning of the term 'leave' from other permissible sources.

In this regard, a reference may be made to the relevant legal precedents. The same are discussed as follows :

1. *Aspinwall and Co. Ltd. Vs CIT [2001] 251 ITR 323 (SC) : 170 CTR 68 (SC)*

In this case, the Supreme Court was seized with the issue of deduction of investment allowance under section 32A of the Act. In this connection, the Supreme Court was required to interpret the meaning of the term 'manufacture'

It was, *inter-alia*, held in this case that the word 'manufacture' has not been defined in the Act. In the absence of a definition of the word 'manufacture' it has to be given a meaning as is understood in **common parlance**.

2. *Narang Overseas P. Ltd. Vs ITAT [2007] 295 ITR 22 (Bom)*

In this case, the Bombay High Court was seized with the issue of powers of the ITAT to grant and extend the period of stay of demand.

It was, *inter-alia*, held in this case that while construing a word which occurs in a statute or a statutory instrument, in the absence of any definition in that very document, it must be given the same meaning which it receives in **ordinary parlance** or in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. When the word to be construed is used in a taxing statute or a Notification issued thereunder, it should be understood in its commercial sense.

3. *CIT Vs J.K. Gupta [2003] 264 ITR 482 (All) : 185 CTR 340 (All)*

In this case, the Allahabad High Court was seized with the issue of exemption under section 5(1)(iv) of the Wealth Tax Act, 1957.

In this connection, the Allahabad High Court was required to interpret the meaning of the word 'house' for the purpose of allowing exemption under section 5(1)(iv) of the Wealth Tax Act, 1957.

It was, *inter-alia*, held that if a term is not defined in the statute, then its meaning in **common parlance** is to be adopted.

4. *CIT Vs U.P. Paschimi Kshetriya Vikas Nigam Ltd. [2003] 264 ITR 273 (All) : [2004] 188 CTR 40 (All)*

In this case, the Allahabad High Court was seized with the issue of deduction of investment allowance under section 32A of the Act. For this purpose, the Allahabad High Court was required to interpret the meaning of the expression 'road transport vehicle'.

It was, *inter-alia*, held in this case that the expression 'road transport vehicle' is not defined in the Income-Tax Act. In the absence of a statutory definition, its meaning in **common parlance** has to be adopted.

*From the aforesaid legal precedents, it is clearly established that in the absence of a definition of a term or expression in the statute, its meaning in **common parlance** is to be adopted.*

IV. How to find the meaning of the term / expression in common parlance

The issue to be dealt with now is how to find out the meaning of the term / expression, as is understood in **common parlance**. In this regard, the assistance of certain legal precedents is taken which are discussed as follows :

1. *State of Orissa Vs The Titaghur Paper Mills Co. Ltd. AIR 1985 SC 1293*

It was, *inter-alia*, held in this case that an effort should be made to take aid of dictionaries to ascertain the meanings of a word in **common parlance**, but nevertheless to bear in mind to select a particular meaning which is relevant to the context in which the Court has to interpret

the word. The relevant observations of the Supreme Court in paragraph 8(a), on page 10 of the judgement are as follows :

“8.(a) *Where a term has not been statutorily defined or judicially interpreted and there is insufficient material on record as to the meaning of the words, the Court must seek to ascertain its meaning in common parlance with such aid as is available to it. The court may take the aid of dictionaries in such cases to ascertain its meaning in common parlance. In doing so, the Court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the Court would have to select the particular meaning which would be relevant to the context in which it has to interpret that word.*” (Emphasis added)

2. *Abdulgafar A. Nadiadwala Vs ACIT [2004] 267 ITR 488 (Bom)*

In this case, the Bombay High Court was seized with the issue of deduction under section 80HHC of the Act. In this regard, the High Court was required to interpret the meanings of the terms, ‘Goods’, ‘Merchandize’ and ‘Sale proceeds’.

It was, *inter-alia*, held in this case that the Income-Tax Act does not define the terms, ‘goods’ or ‘merchandize’. It is well-settled that in the absence of there being anything contrary to the context, the language of a statute should be interpreted according to the plain dictionary meaning of the terms used therein.

The aforesaid judgement of the Bombay High Court was later on affirmed in the case of *CIT Vs B. Suresh [2009] 313 ITR 149 (SC)*.

3. *K.L. Swamy Vs CIT [1999] 239 ITR 386 (Karn)*

In this case, the Karnataka High Court was required to interpret the expressions ‘voluntary’ and ‘good faith’ in the context of waiver of penalty under section 273A of the Act by the CIT. On page 391 of the Report, it was held by the High Court that in the absence of any definition for the expressions in the statute, there is no option, but to depend upon the literal and dictionary meaning thereof.

In the light of the aforesaid legal precedents, it is clearly established that in order to ascertain the meaning of a term / expression in common parlance, the aid of dictionaries should be taken. However, in doing so, only the particular meaning which would be relevant to the context, should be selected.

Further, in order to ascertain the meaning of such a term / expression in common parlance, the aid of dictionaries should be taken. However, in doing so only the particular meaning which should be relevant to the context, should be selected.

V. The meaning of the term 'leave' as per dictionaries

In the light of the aforesaid legal position an attempt was made to ascertain the meaning of the term 'leave' with the aid of dictionaries. In this connection, a reference was made to the Advanced Law Lexicon by P.R. Aiyar, 3rd Edition, 2005, Book No.3.

On page 2674 of the aforesaid Advanced Law Lexicon, there are several meanings assigned to the term 'leave'. However, for our purpose, the definition of the term 'leave' as provided under rule 2(k) of the All India Services (Leave) Rules, 1955, is relevant. Rule 2(k) of the All India Services (Leave) Rules, 1955, is reproduced as follows :

“2(k) 'leave' includes earned leave, half pay leave, commuted leave, leave not due, extraordinary leave, study leave, special disability leave, maternity leave or any other authorised leave of absence; ”

From the aforesaid definition of the term 'leave' it may be seen that it is an inclusive definition. It is, however, significant to note that this definition of the term 'leave' includes earned leave, maternity leave, etc. It also includes any other authorized leave of absence. It may imply that the term 'leave' may also include, casual leave, because it is any other authorized leave of absence.

VI. In the present context, it is also relevant to state that the benefit of LTA / LTC, being a welfare measure for the employees, the relevant provisions should be construed liberally and in favour of the assessee.

In the present context, it will also be relevant to state that a provision for deduction, exemption or relief should be construed liberally and in favour of the assessee. In support of this stand, reliance is placed on the following legal precedents :

1. *CIT Vs Gwalior Rayon Silk Manufacturing Co. Ltd. [1992] 196 ITR 149 (SC)*

In this case, it was observed by the Apex Court on page 156 of the Report that a provision for deduction, exemption or relief should be construed liberally and in favour of the assessee.

2. *Mysore Minerals Ltd. Vs CIT [1999] 239 ITR 775 (SC)*

It was, *inter-alia*, held in this case that a provision of the Income-Tax Act, 1961, should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee.

It is, thus, clearly established that a provision for deduction, exemption or relief should be construed liberally and in favour of the assessee.

In view of the aforesaid reasons, the provisions of section 10(5) of the Act, relating to the exemption of LTA / LTC, in the hands of an employee, should be construed liberally and in favour of the employee (assessee).

VII. Conclusion

In the light of the detailed discussion in the preceding paragraphs (I) to (VI), the aforesaid queries which are answered are as follows :

1. No definition of the term '*leave*' has been provided under any provision of the I.T. Act, 1961. However, in the absence of the definition of the term '*leave*' under the Act, its meaning as provided in rule 2(k) of the All India Services (Leave) Rules, 1955, may be adopted. The aforesaid rule 2(k) is reproduced as follows :

“2(k) 'leave' includes earned leave, half pay leave, commuted leave, leave not due, extraordinary leave, study leave, special disability leave, maternity leave or any other authorised leave of absence; ”

2. Either under section 10(5) of the I.T. Act, 1961 or under rule 2B of the I.T. Rules, 1962, no limit has been provided regarding the number of days for which an employee should take leave in order to claim the benefit of exemption under section 10(5) of the Act.

Therefore, even a leave for a day will fulfil the requirement of the conditions laid down under section 10(5) of the Act, r.w.r 2B of the Rules, in order to claim the benefit of exemption under section 10(5) of the Act.

3. As already discussed that leave even for a day fulfils the requirement of section 10(5) of the Act. Besides, the aforesaid definition of the term '*leave*' also includes any other authorized leave of absence.

It, therefore, implies that even casual leave for one day will fulfil the requirement of section 10(5) of the Act.

4. As per the aforesaid definition of the term 'leave', it includes maternity leave also.

Therefore, even a female employee may avail of the benefit of LTA / LTC under section 10(5) of the Act, if she travels to a place other than the place of her employment in connection with her maternity leave.

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