

Taxes are deductible for Leave Travel Concession claims involving foreign travel – Supreme Court

Background

Leave Travel Concession (LTC)¹ granted to an employee to travel on leave, along with his family², to any place in India, is exempt in respect of two journeys in a block of four calendar years. Such exemption is restricted to the actual amount of expenditure incurred for the purpose of such travel which in turn is strictly limited to expenses on air fare, rail fare and bus fare only. It is only available for journeys performed within India and where the journey is performed in a circuitous route, the exemption is limited to what is admissible by the shortest route.

In this context, the Supreme Court, in the case of State Bank of India (SBI)³ observed that tax exemption on LTC is meant only for travel within India and is not applicable for foreign travel. The Supreme Court dismissed the appeal filed by SBI against the Delhi High Court's decision where it was held that the amount received by the SBI employees towards their LTC claim was not liable for the exemption as these employees had visited a foreign location during such journey.

Facts of the case

- Certain employees of the SBI (the employer) had claimed LTC for their travel expenses between two points within India. However,

between the two points (in India) they had also travelled to a foreign country, thus taking a circuitous route for their destination which involved a foreign place⁴. Such claims were fully reimbursed by SBI, and no taxes were deducted⁵ at source for the same.

- Upon spot verification⁶ by the revenue authorities, the relevant Assessing Officer (AO) treated the employer (SBI) as assessee in default for not deducting taxes at source on the amounts claimed by its employees as LTC, on account of the following:
 - The employees had admittedly not travelled only to a domestic destination but to a foreign country as well; and
 - The employees did not take the shortest possible route between the two destinations.
- The AO's order was challenged before the Commissioner of Income tax (Appeals) [(CIT(A)], which was dismissed and so was their appeal before the Income Tax Appellate Tribunal (ITAT).
- Further, the Delhi High Court⁷, dismissed the appeal of SBI by stating that the amount received by the employees towards their LTC claim was not liable for the exemption as these employees had visited foreign countries, which is not permissible.

¹ Section 10(5) of the Income-tax Act, 1961 read with Rule 2B of the Income-tax Rules, 1962

² For the purposes of LTA, "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, as per proviso to section 10(5) of the Act.

³ State Bank of India vs ACIT - Civil Appeal no. 8181 of 2022 (Arising out of SLP (C) No. 9876 of 2020) dated 04 November 2022.

⁴ For instance, some employees claimed LTC for a route of Delhi-Madurai-Colombo-Kuala Lumpur-Singapore-Colombo-Delhi

⁵ Section 192 of the Act

⁶ Under Section 133A of the Act

⁷ ITA no. 05/2020 dated 13 Jan 2020

SBI' s contentions

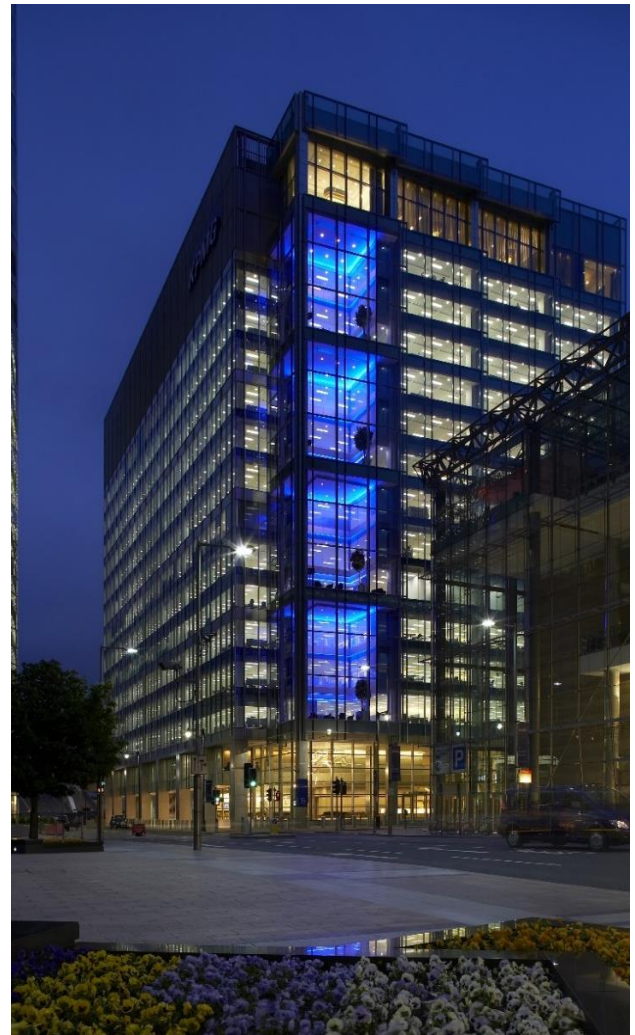
- SBI was of the view that though the travel made by its employees under LTC did involve a foreign leg, they travelled from one designated place in India to another place within India and no LTC payment was made for such foreign travel.
- Additionally, they argued that such LTC payments which were actually made to these employees were for the shortest route of their travel between two designated places within India.
- Further, SBI also argued that there is no specific bar under the Act¹ for foreign travel and therefore a foreign journey can be availed as long as the starting and destination points remain within India.

Supreme Court's decision

- A conjoint reading of provisions of law¹ prescribes that LTC should be of the shortest route between two places within India.
- The Supreme Court negated the contention of SBI (that there is no specific bar on foreign travel and, therefore, a foreign journey can be availed as long as the starting and destination points remain within India) by stating that it was without merits; as, the moment an employee undertakes a travel with a foreign leg, it is not a travel within India and hence not covered under the provisions of the Act¹.
- Foreign travel frustrates the basic purpose of LTC, as such scheme was introduced to allow employees gain some perspective of Indian culture.
- The 6th Pay Commission rejected the plea for paying cash compensation in lieu of LTC and the claim of LTC for foreign travel.
- An employer could not claim ignorance about the travel plans of its employees as during the settlement of LTC Bills the complete facts were made available before them for correct deduction of taxes at source⁵. It was a big mistake in the part of the employer for not taking foreign leg into consideration while granting such exemption.
- Thus, the employer (SBI) was an assessee in default for not deducting tax at source on LTC payments to its employees.

Our comments

This judgement reiterates the fact that exemption with respect to LTC can be claimed only for travel within India as the very purpose of this provision is to familiarize employees with Indian culture. Employers should ensure that necessary documentation is verified in detail before allowing exemption with respect to the claim of LTC.



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