

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.453&454/Ahd/2026  
(Assessment Year: 2016-17)

State Bank of India Bhavnagar Para Branch, Gadhachi Vadla, Bhavnagar, Bhavnagar, Gujarat-364003	Vs.	Income Tax Officer, TDS, Ward-1, Ahmedabad
[PAN No.AAACS8577K]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Dinesh Nair, AR
<b>Respondent by:</b>	Shri Sudhakar Verma, Sr. DR

<b>Date of Hearing</b>	23.03.2026
<b>Date of Pronouncement</b>	26.03.2026

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

Both appeals have been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), ADDL/JCIT(A)-2, Siliguri vide orders dated 12.01.2026 & 22.12.2025 passed for A.Y. 2016-17. Since common facts and issues for consideration are involved for both the appeals before us, both the appeals are being disposed by way of a common order.

2. The assessee has taken the following grounds of appeal:

**ITA No. 453/Ahd/2026 (A.Y. 2016-17)**

“1. The Learned Commissioner of Income-tax (Appeals) (“CIT(A)”) erred in confirming the order of the Assessing Officer (“AO”) holding the appellant to be an assessee in default for failing to deduct tax at source under section 192 of the Income tax Act, 1961 (the Act).

2. The CIT(A) erred in not appreciating that the Appellant had issued e-Circular no CDO/P&HRD-PM/7/2014-15 dated 15th April 2014 stating that the employees

*shall not be entitled to visit overseas countries/ centers as part of leave travel concession ("LTC") which Circular was challenged by the All India State Bank Officers Federation & Ors, before the Madras High Court by way of a writ petition (WP no. 11991 of 2014) and that the Madras High Court had vide its order dated 25 April 2014 granted interim stay of the Circular.*

3. *The CIT(A) further erred in not appreciating that tax was not deducted at source by the Appellant on the LTC paid to its employees during the year under consideration in view of the specific interim directions issued by the Hon'ble Madras High Court in its order dated 16th February 2015 by which the Court held that the LTC paid or reimbursed would not amount to income and that no tax was to be deducted thereon. The CIT(A) ought to have appreciated that if the LTC was not to be treated as income of the employees as per the order of the Hon'ble Madras High Court, the same even otherwise would not require withholding of tax under section 192 of the Act*

4. *The CIT(A) further erred in not appreciating that the Madras High Court vide its said order dated 16 February 2015 having directed the Appellant not to deduct at source on LTC had further stated that if the writ petition challenging the Circular was dismissed, the employees would be liable to pay tax on the LTC amount paid by the Appellant and, therefore, the CIT(A) ought to have quashed the order of the AD holding the Appellant to be an assessee in default.*

5. *The CIT(A) erred in not quashing the order of the AG holding the Appellant to be an assessee in default for the reason that the Appellant, even if it wanted to, could not have deducted tax at source on LTC paid during the year under consideration in view of the orders of the Hon'ble Madras High Court till the time they were in force as acting contrary to the orders of the Hon'ble Court would have amounted to contempt of Court.*

6. *The CIT(A) erred in not following the judgment of the Hon'ble Kerala High Court in State Bank of India v. CIT (ITA no 45 of 2025) where the Hon'ble Court after considering the above set of facts held that the Appellant was justified in not deducting tax at source in view of the interim directions issued by the Madras High Court asking the Appellant not to deduct tax at source.*

7. *The CIT(A) erred in observing that the legal obligation to deduct tax was reinstated once the interim order passed by the Hon'ble Madras High Court was vacated without appreciating that the order of the Single Judge of the Hon'ble Madras High Court was challenged before the Division bench and later the Division bench's order before the Hon'ble Supreme Court and that the Hon'ble Supreme Court in SLP(C) no. 16734 of 2023 has ordered the Appellant bank from not making any recoveries from its employees during the pendency of the petition.*

8. *Without prejudice to above grounds, the CIT(A) erred in not holding that the Appellant could not have been deemed to be an assessee in default under section 201(1) of the Act if the employee had furnished the return of income, taken into account*

*such sum for computing income and paid the tax due on income declared by the employee.*

*The appellant craves leave to add, amend, alter or delete and/or modify the above grounds of appeal before or during the course of hearing”*

3. The brief facts of the case are that the assessee is a branch of State Bank of India which had provided Leave Fare Concession (LFC) to its employees and had treated the same as exempt under section 10(5) of the Income-tax Act ("the Act") while computing TDS under section 192 of the Act. During the course of assessment proceedings, the Assessing Officer noticed that certain employees had undertaken journeys involving a foreign leg and the assessee had not deducted tax at source on such payments. Accordingly, notices were issued to the assessee asking it to explain as to why it should not be treated as an assessee in default under section 201(1) and liable for interest under section 201(1A) of the Act.

4. In response, the assessee submitted that the LFC benefit was granted strictly in accordance with section 10(5) of the Act read with Rule 2B, as the designated place of travel was within India and the reimbursement was restricted to the fare of the shortest route within India. The assessee further submitted that there is no explicit prohibition in the Act or Rules against a foreign leg in the course of such travel. The assessee also relied upon industry practice, guidelines issued by the Indian Banks' Association, and various judicial precedents to contend that the assessee had acted under a bona fide belief and therefore could not be treated as an assessee in default. Further **the assessee placed reliance on interim orders of the Hon'ble Madras High Court, wherein it was held that LFC payments would**

**not amount to income for the purpose of TDS during the pendency of the writ proceedings, and therefore the assessee could not have deducted tax without violating the court's directions.**

5. However, the Assessing Officer did not accept the contentions of the assessee. the Assessing Officer, relying upon the judgment of the Hon'ble Supreme Court dated 04.11.2022, held that exemption under section 10(5) of the Act is available only in respect of **travel within India and not where foreign travel is involved**. The Assessing Officer observed that once the journey includes a foreign leg, the exemption is not admissible and the amount becomes taxable in the hands of the employee. Accordingly, the assessee was held to be an assessee in default for non-deduction of tax at source and demand under section 201(1) along with interest under section 201(1A) was raised.

6. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the CIT(Appeals). Before CIT(Appeals), the assessee reiterated its submissions regarding compliance with Rule 2B, absence of any statutory bar on foreign travel during the journey, and its bona fide belief supported by judicial precedents. It was also contended that the Bank had only allowed exemption where the designated place was in India and that the foreign leg was merely incidental.

7. The CIT(A), however, did not accept the submissions of the assessee. The CIT(Appeals) observed that a combined reading of section 10(5) of the Act and Rule 2B clearly indicates that the exemption is

available only for travel from one place in India to another place in India by the shortest route. The CIT(A) further relied upon the decision of the Hon'ble Supreme Court dated 04.11.2022, wherein it was categorically held that LTC/LFC exemption is not available in cases where the travel involves a foreign leg. The CIT(Appeals) held that the moment foreign travel is involved, the journey ceases to be a journey within India and therefore falls outside the scope of section 10(5) of the Act.

8. With regard to the argument of bona fide belief and reliance on earlier judicial orders, the CIT(A) held that in view of the authoritative pronouncement of the Hon'ble Supreme Court, the issue has attained finality and the assessee cannot escape liability on this ground. The CIT(A) further held that the Assessing Officer was justified in treating the assessee as an assessee in default and in raising demand under section 201(1) along with interest under section 201(1A). Accordingly, all the grounds raised by the assessee were dismissed and the order of the Assessing Officer was upheld.

9. The assessee is in appeal before us against the order passed by the CIT(Appeals) dismissing the appeal of the assessee.

10. We have heard the rival contentions and perused the material on record.

11. We have heard the rival contentions and perused the material available on record.

12. At the outset, we note that the issue on merits regarding allowability of exemption under section 10(5) of the Act in cases where the journey involves a foreign leg now stands concluded against the assessee by the judgment of the Hon'ble Supreme Court dated 04.11.2022. There is no dispute on this legal position and the same is duly acknowledged. However, the limited controversy before us is whether, in the peculiar facts of the present case, the assessee can be treated as an "assessee in default" under section 201(1) of the Act for non-deduction of tax at source during the relevant period.

13. The contention of the assessee has consistently been that during the year under consideration, it was bound by the interim orders passed by the Hon'ble Madras High Court in W.P. No.11991 of 2014, wherein vide order dated 16.02.2015 it was specifically clarified that the LFC payments would not amount to income so as to enable deduction of tax at source and further that if the writ petition was ultimately dismissed, the employees would be liable to pay tax. The assessee has submitted that in view of such binding judicial directions, it could not have deducted tax at source and any such deduction would have amounted to disobedience of the order of the Hon'ble High Court.

14. We find considerable merit in the aforesaid contention of the assessee. The interim directions of the Hon'ble Madras High Court were in force during the relevant previous year and the assessee, being a party to the proceedings, was duty bound to comply with the same. The obligation under section 192 of the Act to deduct tax at source cannot be

read in isolation and must yield to binding judicial orders. Therefore, the failure to deduct tax in such circumstances cannot be equated with a default contemplated under section 201(1) of the Act.

15. We further find that an identical issue has been considered by the Co-ordinate Bench of the Tribunal in the case of **State Bank of India in ITA No.514/Agr/2024**, wherein after considering the decision of the Hon'ble Supreme Court as well as the interim orders of the Hon'ble Madras High Court, ITAT held that the assessee bank could not be treated as an assessee in default since it was bound to follow the interim directions of the Hon'ble High Court. The Tribunal categorically observed that the assessee had no option but to comply with the orders of the Hon'ble High Court and non-deduction of tax in such circumstances could not invite the rigours of section 201(1) and 201(1A) of the Act.

16. More importantly, the **Hon'ble Kerala High Court in ITA No.45 of 2025** (order dated 18<sup>th</sup> November 2025) has examined this issue in detail and has held in favour of the assessee. The relevant findings of the Hon'ble High Court, which have a direct bearing on the issue before us, are reproduced below for ready reference:

*“The interim order granted by this Court is explained to the effect that any amount paid to the petitioner towards LTC or re-imburement of LTC pursuant to the impugned order would not amount to income so as to enable the Bank to deduct tax at source. It is made clear that if the writ petition is dismissed, the employees are liable to pay tax on the amount paid by Bank.”*

*“It is only when the appellant-assessee, after having a liability to deduct tax, fails to do so, the question of invoking Section 201 of the Act and treating it as an ‘assessee in default’ arises. Here, the Madras High Court found, prima facie, that the amount paid*

*would not be the income of a payee so as to deduct tax. Therefore, we are of the opinion that the provisions of Section 201(1) of the Act are not attracted to the case at hand.”*

*“The appellant-assessee was under an obligation not to deduct tax at source and therefore, the assessee could not be held to be assessee in-default for non-deduction of tax at source on impugned LFC payments.”*

17. The Hon’ble High Court has thus clearly held that where the assessee was restrained by judicial orders from deducting tax at source, the provisions of section 201 of the Act cannot be invoked and the assessee cannot be treated as an assessee in default.

18. In the present case also, the facts are materially identical. The assessee was operating under the binding interim directions of the Hon’ble Madras High Court during the relevant period and therefore could not have deducted tax at source. The subsequent decision of the Hon’ble Supreme Court, though settling the issue on merits, cannot retrospectively fasten liability under section 201(1) of the Act for a period during which the assessee was acting in compliance with judicial orders.

19. We also find force in the argument of the assessee that the scheme of section 201 of the Act itself contemplates that a person can be treated as an assessee in default only when there is a failure to deduct tax in spite of a legal obligation to do so. In the present case, such legal obligation stood eclipsed by the interim directions of the Hon’ble High Court.

20. In view of the above discussion, respectfully following the decision of the Hon’ble Kerala High Court in ITA No.45 of 2025 and the decision of the Co-ordinate Bench in ITA No.514/Agr/2024, we hold that the

assessee cannot be treated as an assessee in default under section 201(1) of the Act for the impugned period. Consequently, the interest charged under section 201(1A) also does not survive.

21. Accordingly, we direct the Assessing Officer to delete the demand raised under section 201(1) and 201(1A) of the Act.

22. In the result, both the appeals of the assessee are allowed.

<b>This Order is pronounced in the Open Court on</b>	<b>26/03/2026</b>
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**Sd/-**  
**(NARENDRA P. SINHA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 26/03/2026

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad