IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.507 to 518/Bang/2020
Assessment year : 2011-12 to 2016-17

M/s Life Insurance Corporation of India, No.13, Jeevan Jyothi Building, Market Road, Soppugudde, Thirthahalli-577 432. **PAN – AAACL 0582 H**	Vs.	Income Tax Officer CR Building Devraj Urs Layout, 'C' Block, (TDS) Ward, Davangere-577 066.
APPELLANT		RESPONDENT

ITA No.519 to 530/Bang/2020
Assessment year : 2011-12 to 2016-17

M/s Life Insurance Corporation of India Davangere Branch, 62D, Branch II Harihar Road, Davangere-577 006. **PAN – AAACL 0582 H**	Vs.	Income Tax Officer CR Building Devraj Urs Layout, 'C' Block, (TDS) Ward, Davangere-577 066.
APPELLANT		RESPONDENT

ITA No.531 to 542/Bang/2020
Assessment year : 2011-12 to 2016-17

M/s Life Insurance Corporation of India Divisional Office, Jeevan Prakash, Gopalagowda Extension,	Vs.	Income Tax Officer CR Building Devraj Urs Layout, 'C' Block, (TDS) Ward,

100 Feet Road, Shivamogga-577 205. **PAN – AAACL 0582 H**		Davangere-577 066.
APPELLANT		RESPONDENT

ITA No.543 to 554/Bang/2020
Assessment year : 2011-12 to 2016-17

M/s Life Insurance Corporation of India Haveri Branch, Pune Bangalore Road, Haveri – 581 110. **PAN – AAACL 0582 H**	Vs.	Income Tax Officer CR Building Devraj Urs Layout, 'C' Block, (TDS) Ward, Davangere-577 066.
APPELLANT		RESPONDENT

ITA No.555 to 566/Bang/2020
Assessment year : 2011-12 to 2016-17

M/s Life Insurance Corporation of India Main Branch,P.B Road, Near KSRTC Depot, Chitradurga – 577 501 **PAN – AAACL 0582 H**	Vs.	Income Tax Officer CR Building Devraj Urs Layout, 'C' Block, (TDS) Ward, Davangere-577 066.
APPELLANT		RESPONDENT

Appellant by	:	Chytanya KK, Advocate
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of hearing	:	10/12/2020
Date of Pronouncement	:	21/01/2021

ORDER

PER BENCH :

The assessee has filed sixty appeals challenging demand raised under section 201(1) ad interest levied under section 201(1A) of the Act, levied by Ld.AO, confirmed by Ld.CIT(A), Davangere, by order dated 29/01/2020 for assessment years 2011-12 to 2016-17 in respect of all branches. Grounds raised by assessee have been encapsulated by way of a chart reproduced in the paragraph hereunder.

Brief Facts of the Case are as under:

2. Ld.Counsel submitted that assessee M/s Life Insurance Corporation of India has branches at Theerathahalli, Chitradurga, Davangee, Sivamogga and Harveri. He submitted that the head office of assessee is in Mumbai. Ld.AO, in order to verify compliance to TDS provisions, conducted survey under section 133A of the Act, for the years under consideration at branch offices mentioned hereinabove. On verification, Ld.AO observed that, the assessee has not deducted TDS under section192, in respect of cash medical benefit paid to its employees, payment made to Chinnu Graphics, payment to Kulkarni Services, payments to Sodexo SVC India Pvt.Ltd., payment made to HP India Sales Pvt.Ltd., and EMDC Projects. Ld.AO also observed that the cash medical benefit paid to employees was considered as exempt under section 10 of the Act in respect of cash Medical Benefit.

2.1. Ld.AO after considering submissions of assessee, in respect of Cash Medical Benefit held that, under the Act, any allowance received by an employee is fully taxable, unless it is specifically exempted by provisions of the Act. Ld.AO held that the deductor(assessee) is giving fixed medical benefits to its employees to meet medical expenditure irrespective of actual expenditure incurred by the employee. He noted that, employees get such benefit without furnishing any proof of having utilised the amount for medical treatment/expenditure either for the employee or any of the family members and therefore, fixed medical benefit paid to the employees are not against the expenditure, and not in the nature of reimbursement. Ld.AO also held that, there is no provision to allow the same under section 10 of the Act, and the amount received as fixed allowance is fully taxable in the hands of employee as perquisite. Ld.AO also noted that, the assessee discontinued the practice in financial year 2009-10. Ld.AO, thus in all appeals under consideration, held the assessee to be "assessee in default" and passed orders under section 201(1) of the Act for years under consideration.

2.2. At the outset, both sides admit that, common issues are involved in all 60 appeals. Ld.Counsel summarized the demand raised under section 201(1) and interest levied under section 201(1A) of the Act, by Ld.AO, branch wise, qua assessment year, in paper book at page 3-6 as under:

Theerthahalli Branch

	Cash Medical Benefit u/s 192		Payment to Chinnu Graphics 194C		Payment to Kulkarni Services u s 194C		
	TDS deductible	Interest 201 (1A)	TDS deductible	Interest 201 (1A)	TDS deductible	Interest 201 (1A)	Total
2011-12	42 437	35,616	1 033	840	1,152	924	82,002
2012-13	31 867	22,896	1,218	864	1 152	792	58 789
2013-14	24,456	14,640	1,216	864	1,152	792	43,120
2014-15	31,511	15 120	1,278	576	1,152	528	50,165
2015-16	32,129	11 556	1,377	440	1,152	414	47 ,068
2016-17	1,15,088	27 ,600	1,396	209	768	184	1,45,245

Chithradurga:

	Cash Medical Benefit u/s 192		Payment to Chinnu Graphics u/s 194C		Payment to Sodexo SVC India Pvt Ltd u/s. 194C		Total
	TDS deductible	Interest u/s 201 (1A)	TDS deductible	Interest 201(1A)	TDS deductible	Interest u/s 201(1A)	
2011-12	21 , 424	21,828	1,541	1,575			46,368
2012-13	35,973	25,848	-		2,329	1,656	65,806
2013-14	41,526	24,900	2,104	1,386			69,916
2014-15	46,243	22,176	2,339	1,380	9,418	4,512	86,068
2015-16	45,009	16,200	2,250	1,035			64,494
2016-17	1,51,475	36,336	2,167	630	10,299		2,03,255

Davangere:

	Cash Medical Benefit u/s 192		Payment to Chinnu Graphics u/ s 194C		Payment to Sodexo SVC India Pvt Ltd u s 194C		Total
	TDS deductible	Interest 201(1A)	TDS deductible	Interest 201(1A)	TDS deductible	Interest u/s 201 (1A)	

2011-12	9,645	8,064	-	-	-	-	17,709
2012-13	9,300	6,696	1,207	864	-	-	18,067
2013-14	31,003	18,600	-	-	-	-	49,603
2014-15	36,482	17,472	707	350	8,814	4,224	68,049
2015-16	40,020	14,400	1,460	588	-	-	56,468
2016-17	1,30,588	31,320	666	156	9,116	2,275	1,74,121

Shivamogga:

	Cash Medical Benefit u/s 192		Payment to HP In la Sales Pvt. Ltd. an MDC Projects u s 194J#		Total
	TDS deductible	Interest u/ s 201(1A)	TDS deductible	Interest u/ s 201(1A)	
201 1-12	2, 49,647	2,09,703	-	-	4,59,350
2012-13	1,04,870	75,506	21,277 Refer Note #	-	2,16,972
2013-14	1,24,514	85,915	-	-	2, 10,429
2014-15	1,40,103	79,859	-	-	2, 19,962
2015-16	1,33,322	59,995	-	-	1,93,317
2016-17	3,70,886	1,22,392	-	-	4,93,287

Note : Issue with respect to Payment to HP India Sales Pvt. Ltd. and EMDC Projects u/s 194J for the AY 2012-13, appeal was allowed by the Ld. CIT(A).

Haveri:

	Cash Medical Benefit u/ s 192		Total
	TDS deductible	Interest u/ s 201 (IA)	
2011-12	59,053	47,880	1,06,933
2012-13	43,690	31,392	75,082
2013-14	47 ,725	33,408	81,133
2014-15	58,881	28,244	87,125
2015-16	48,122	22,136	70,258
2016-17	2, 15,082	73,128	2,88,210

Aggrieved by demand raised under section 201(1) and levy of interest under section 201(1A) of the Act, assessee preferred appeal before Ld.CIT(A).

3. Ld.CIT(A) upheld the order of Ld.AO by way of a common order passed for all the branches, for all years under consideration, by observing as under:

> *"6. The submission of the appellant has been considered. Ground of appeal I is general in nature and not been addressed specifically. As regards ground of appeal 2, the appellant has not substantiated its claim that its request for more time was declined by the AO. Besides, the appellant has filed submission during the appeal proceedings and the AR's of the appellant attended the hearing and presented arguments before the undersigned which are duly considered while disposing this appeal. Therefore, in my considered view the grievance of the appellant has been duly addressed.*
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> *6.1 Grounds 3 to 6 are contentions relating to the decision of the AO to hold that cash medical benefit given to the employees of the deductor is fully taxable and the deductor was liable to effect IDS on the said payment and the failure on the part of the deductor attracts the provisions of section and 201(1A) of the Act. The submission of the appellant has duly been considered. The provisions of section 17(1) of the Act defines the term 'salary' to include the value of any perquisite allowed or amenity provided by employer to its employee in lieu of or in addition to any salary or wages. Further, as per section 17(2) or the Act, the term 'perquisite' includes the value of any other fringe benefit or amenity as may be prescribed under the rules. The proviso lays down the details relating to medical facilities provided to an employee or reimbursement or rncdical expenses incurred by him which will not be considered as perquisites. Clause (v) of the proviso specifies as under:*
>
> > *(v) any sum paid by the employer: in respect of any expenditure actually incurred .by the employee on his, medical treatment or treatment of any-member of his family [other than the treatment referred to in Clause (i) and (ii)]; so however, that such sum does not exceed (fifteen) thousand rupees in the previous year;*

From the above it is clear that on satisfying specific conditions such expenditure will not be considered as a Perquisite in the hands of the-employee, which are as under:

i) Employee should have spent the amount on medical treatment:

ii) The amount should have been spent on his own or his family members ' treatment

iii) Such amount should be reimbursed by the employer.

iv) Amount reimbursed by the employer does not exceed Rs15000 in the financial year:

6.2 In case of the appellant, the AO has recorded finding that fixed cash medical benefit given to its employees irrespective of the actual expenditure incurred by the employee. The employee is not required to furnish any proof for having utilized the amount for the purpose of medical treatment/expenditure. Thus the fixed medical benefit is not paid to the employee as reimbursement against the actual expenditure incurred. These facts remain uncontroverted and the appellant argues that medical allowance whether fixed component or not is allowable u/s17(2) if LIC (deductor) satisfies itself that expenditure is actually incurred or to be incurred by the employee in the year on his medical treatment or for treatment of member of his family. However, the above contention of the appellant is not in accordance with the provision of law. As mentioned earlier amount upto Rs 15,000/- reimbursed by the employer in respect of expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family is exempt from being considered as perquisite. Therefore, as the fixed amount is being paid as cash medical benefit to the employees which is unconnected to the actual expenditure, if any, incurred by the employees, this expenditure cannot be considered as exempt from being taxed as perquisite.

6.3 The contention of the appellant as regards letter dated 20/05/2002 from CBDT has been considered. The said letter mentions that CBDT has no objection in extending benefit of exemption under proviso (V) of section T 7(2) 10 the employees of LIC drawing payment of Rs 2500/- per annum for medical treatments provided LIC satisfies itself that the expenditure is actually incurred or to be incurred by the employee in the year for medical treatment. The request letter of LLC to CBDT dated 29/08/2001 filed by the appellant mentions details of the categories of employees and the amount of CMB given to them. It is also mentioned

in that letter that the LIC has sought and obtained such permission from CBDT from time to time i.e. 02/01/1991 and 17/03/1994 which apparently indicates that with change of catagories of employees or/and revision of pay and change in amount of CMB, the LIC has been seeking such approval-from CBDT. The appellant claims that due to revision of pay the present amount of CMB has changed. Therefore, it was incumbent upon the to sack such approval of CBDT as it has done in the past. But, no such approval has been taken for the relevant period. Therefore, the contentions of the appellant cannot be accepted.

6.4 The appellant has also argued that lax cannot be recovered from the employer on account of short deduction of tax if a bonafide estimate of salary taxable in the hands of the employees has been made by the employer. It is observed that when (he provision is very clear that only reimbursement for the expenditure incurred by the employee to an amount of Rs 15000 is exempt from being treated as perquisite, there is no scope for any assumption or presumption for the employer as regards deciding the taxability or fixed cash medical benefit given to employees. Besides the appellant has not brought any material on record either before ITO(TDS) or before the undersigned to support its contention that estimates have been filed by the individual employees with regard to their tax liability in respect of income received by them. In absence of any evidence to conclude that the deductor(LIC) has based deduction of tax at source on the estimation provided by the employees, the claim of bonafide estimate by the appellant will not muster any credence. It is not the case of the appellant that employees have included cash equivalent of CMB as part of the income or provided the accountant's certificate to prove that this income has been offered for tax as mandated in the proviso to Sec.201. In fact the AO has noted that the employees have claimed the amount of CMB as exempt. u/s.10 of the Act. Therefore, the claim of the appellant to justify its action of non compliance with the TDS provision as an honest and bonafide estimate, is not maintainable.

6.5 In view of above, the amount of cash medical benefit (CMB) paid to its employees is held to be liable for TDS by the deductor. For the failure to .effect TDS by the deductor, the AO was right in invoking the provisions of section 201(1) and charging interest u/s.201(1A) of the Act. The relevant grounds of the appellant stand dismissed.

6. *In ground of appeal 7, the appellant has submitted that the AO has raised demand u/s 201(1) and u/s 201(1A) for non deduction of tax in respect of payment to M/S Chinnu Graphics. The appellant has submitted that the said party has assured to file certificate from Charted Accountant to confirm that the amount received from LIC is included in computation income and has requested the CIT(A) to consider the certificate. if produced within a. week. However, it is observed that no such certificate has been filed by the appellant.*

7.1 Rule 31 ACB of IT Rules provide that the certificate from an accountant in Form 26Ä Shall be furnished to the DGIT (Systems) or the person authorized by the DGIT(Systems) in accordance With procedure, format and standards specified under Sub Rule 2. Form no. 26A is required, to be furnished by the person responsible for making payment without TDS. The person is also required to furnish the details of interest payment for non deduction/ short deduction of tax under section (1A) of section 201 of the Act. The certificate from the accountant is to be furnished as Annexure A to form No 26A. Since the appellant has not furnished this certificate, the contention is found to be devoid of any basis. The ground of appeal is dismissed.

8. AS regards payment to Kulkarni Services, the-appellant has contended that payment was in the nature of rent for hiring machinery (generator) and not contract Payment u/s 194C as held by the AO. However no supporting evidence has been brought on record by the appellant to substantiate its claim. Therefore in absence of any evidence the contention of the appellant cannot be accepted.

In the result, the appeals of the appellant for Ys. 2011-12 to 2016-17, are dismissed."

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

4. Ld.Counsel before us filed summary of grounds pertaining to the years under consideration at page 7-15 of the paper book as under:

Grounds	AYs	Thirtha halli	Have ri	Chithra durga	Shiva mogga	Davan gere
The Order of the Learned Commissioner (Appeals) in so far as it is prejudicial to the interest of the Appellant is not justified in law and on facts and circumstances of the case.	2011-12	1	1	1	1	1
	2012-13	1	1	1	1	1
	2013-14	1	1	1	1	1
	2014-15	1	1	1	1	1
	2015-16	1	1	1	1	1
	2016-17	1	1	1	1	1
The notice issued and the impugned order passed by Learned Income Tax Officer, TDS Ward, Davangere under Section 201(1)/201(1A) are bad and without jurisdiction	2011-12	2	2	2	2	2
	2012-13	2	2	2	2	2
	2013-14	2	2	2	2	2
	2014-15	2	2	2	2	2
	2015-16	2	2	2	2	2
	2016-17	2	2	2	2	2
The notice issued by the Learned Income Tax Officer, TDS Ward Davangere under Section 201 is bad being combined, vague and without application of mind.	2011-12	3	3	3	3	3
	2012-13	3	3	3	3	3
	2013-14	3	3	3	3	3
	2014-15	3	3	3	3	3
	2015-16	3	3	3	3	3
	2016-17	3	3	3	3	3

The impugned order passed under Section 201 is barred by the limitation.	2011-12	4	4	4	4	4
	2012-13	4	4	4	4	4
	2013-14	4	4	4	4	4
	2014-15	4	4	4	4	4
	2015-16	4	4	4	4	4
	2016-17	NA	NA	NA	NA	NA
The Learned Assessing Officer is not justified in passing the order under Section 201(1)/201(1A) without giving a sufficient opportunity of being heard to produce requisite documents.	2011-12	5	5	5	5	5
	2012-13	5	5	5	5	5
	2013-14	5	5	5	5	5
	2014-15	5	5	5	5	5
	2015-16	5	5	5	5	5
	2016-17	4	4	4	4	4
	-	-	-	-	-	-
As regards TDS on Cash Medical Benefit	-	-	-	-	-	-
The Lower Authorities have erred in treating the Appellant as 'assessee-indefault' under Section 201(1) of the IT Act by holding that the Appellant has failed to deduct tax under section 192 of the IT Act with respect to medical reimbursement provided to the employees.	2011-12	6.1	6.1	6.1	6.1	6.1
	2012-13	6.1	6.1	6.1	6.1	6.1
	2013-14	6.1	6.1	6.1	6.1	6.1
	2014-15	6.1	6.1	6.1	6.1	6.1
	2015-16		6.1	6.1	6.1	6.1
	2016-17	5.1	5.1	5.1	5.1	5.1

The lower authorities have failed to appreciate that medical reimbursement is not a "perquisite" under Section 17(2) of the IT Act read with Rule 3 of the IT Rules and hence not chargeable to tax at all.	2011-12	6.2	6.2	6.2	6.2	6.2
	2012-13	6.2	6.2	6.2	6.2	6.2
	2013-14	6.2	6.2	6.2	6.2	6.2
	2014-15	6.2	6.2	6.2	6.2	6.2
	2015-16	6.2	6.2	6.2	6.2	6.2
	2016-17	5.2	5.2	5.2	5.2	5.2
The Lower Authorities have failed to appreciate that sum paid to its employees, not exceeding Rs. 15,000, in respect of expenditure on medical treatment is not a "perquisite" under clause (v) of the proviso to Section 17 (2) of the IT Act.	2011-12	6.3	6.3	6.3	6.3	6.3
	2012-13	6.3	6.3	6.3	6.3	6.3
	2013-14	6.3	6.3	6.3	6.3	6.3
	2014-15	6.3	6.3	6.3	6.3	6.3
	2015-16	6.3	6.3	6.3	6.3	6.3
	2016-17	5.3	5.3	5.3	5.3	5.3
The Lower Authorities have failed to appreciate that the Appellant has not been deducting tax at source underSection192on medical reimbursements relying on the CBDT's letter dated 20.05.2002.	2011-12	6.4	6.4	6.4	6.4	6.4
	2012-13	6.4	6.4	6.4	6.4	6.4
	2013-14	6.4	6.4	6.4	6.4	6.4
	2014-15	6.4	6.4	6.4	6.4	6.4
	2015-16	6.4	6.4	6.4	6.4	6.4
	2016-17	5.4	5.4	5.4	5.4	5.4

The Lower Authorities have failed to appreciate that in the impugned financial year, the	2011-12	6.5	6.5	6.5	6.5	6.5
	2012-13	6.5	6.5	6.5	6.5	6.5

Appellant was not obliged to obtain evidence or proof of medical expenditure from the employees since Section 192(2D) which was inserted by the Finance Act, 2015 was applicable with effect from AY 2015-16 and even othemvise Section 192(2D) read with Rule 26C is not applicable to reimbursement of medical expenses.	2013-14	6.5	6.5	6.5	6.5	6.5
	2014-15	6.5	6.5	6.5	6.5	6.5
	2015-16	6.5	6.5	6.5	6.5	6.5
	2016-17	5.5	5.5	5.5	5.5	5.5
The Lower Authorities are not justified in rejecting the contention of the appellant on surmises and conjectures and on mistaken fact that the appellant discontinued its practice in FY 2009-10	2011-12	6.6	6.6	6.6	6.6	6.6
	2012-13	6.6	6.6	6.6	6.6	6.6
	2013-14	6.6	6.6	6.6	6.6	6.6
	2014-15	6.6	6.6	6.6	6.6	6.6
	2015-16	6.6	6.6	6.6	6.6	6.6
	2016-17	5.6	5.6	5.6	5.6	5.6
Without prejudice to the above, the Lower Authorities have failed to appreciate that the Appellant has not deducted TDS on the medical reimbursement based on the signed declarations by the employees.	2011-12	6.7	6.7	6.7	6.7	6.7
	2012-13	6.7	6.7	6.7	6.7	6.7
	2013-14	6.7	6.7	6.7	6.7	6.7
	2014-15	6.7	6.7	6.7	6.7	6.7
	2015-16	6.7	6.7	6.7	6.7	6.7
	2016-17	5.7	5.7	5.7	5.7	5.7

The Lower Authorities have grossly erred in charging entire of amount medical reimbursement	2011-12	6.8	6.8	6.8	6.8	6.8
	2012-13	6.8	6.8	6.8	6.8	6.8

paid by the Appellant to its employees under the head salary and treating the Appellant as 'assessee-in-default' under Section 201(1) of the IT Act without even ascertaining the expenditure actuallyincurred by them on the medical treatment of the employee and their family members.	2013-14	6.8	6.8	6.8	6.8	6.8
	2014-15	6.8	6.8	6.8	6.8	6.8
	2015-16	6.8	6.8	6.8	6.8	6.8
	2016-17	5.8	5.8	5.8	5.8	5.8
Without prejudice to the above, the Learned CIT (Appeals) has failed to appreciatethat no tax can be recovered from the employer on account of short deduction of tax at source under section 192 if a bona fide estimate of salary taxable in the hands of the employee is made by the employer.	2011-12	6.9	6.9	6.9	6.9	6.9
	2012-13	6.9	6.9	6.9	6.9	6.9
	_ 2013-14	6.9	6.9	6.9	6.9	6.9
	2014-15	6.9	6.9	6.9	6.9	6.9
	2015-16	6.9	6.9	6.9	6.9	6.9
	2016-17	5.9	5.9	5.9	5.9	5.9
The Learned CIT (Appeals) has failed to appreciate that when the Appellant took a plausible legal stand on exemption of medical reimbursement, it should not be treated as assessee in default.	2011-12	6.10	6.10	6.10	6.10	6.10
	2012-13	6.10	6.10	6.10	6.10	6.10
	2013-14	6.10	6.10	6.10	6.10	6.10
	2014-15	6.10	6.10	6.10	6.10	6.10
	2015-16	6.10	6.10	6.10	6.10	6.10
	2016-17	5.10	5.10	5.10	5.10	5.10
Without prejudice to the above, the Lower Authorities havefailed to appreciate that no order u/ s 201 (1) / 201(1A) of the IT Act can be passed against the Appellant since the employees have filed	2011-12	6.11	6.11	6.11	6.11	6.11
	2012-13	6.11	6.11	6.11	6.11	6.11
	2013-14	6.11	6.11	6.11	6.11	6.11
	2014-15	6.11	6.11	6.11	6.11	6.11
	2015-16	6.11	6.11	6.11	6.11	6.11

their respective returns of income reflecting their incomes under the head 'salaries'.	2016-17	5.11	5.11	5.11	5.11	5.11
As regards TDS on payment to Chinnu Graphics with respect to printing works						
The Lower Authorities have erred in treating the Appellant as 'assessee-indefault' under Section 201(1) of the IT Act by holding that the Appellant has failed to deduct tax under section 194C of the IT Act with respect to printing works	2011-12	7.1	NA	7.1	NA	NA
	2012-13	7.1	NA		NA	7.1
	2013-14	7.1	NA	7.1	NA	NA
	2014-15	7.1	NA	7.1	NA	7.1
	2015-16	7.1	NA	7.1	NA	7.1
	2016-17	6.1	NA	6.1	NA	6.1
The Learned CIT(A) has failed to appreciate that no order u/s 201(1) / 201(1A) of the IT Act can be passed against the Appellant since the payee has filed the return of income and offered the same to tax.	2011-12	7.2	NA	7.2	NA	NA
	2012-13	7.2	NA	NA	NA	7.2
	2013-14	7.2	NA	7.2	NA	NA
	2014-15	7.2	NA	7.2	NA	7.2
	2015-16	7.2	NA	7.2	NA	7.2
	2016-17	6.2	NA	6.2	NA	6.2
The Learned CIT(Appeals) is not justified in failing to seek information with respect to return filed by the party by exercising powers under section 133(6) of the IT Act before treating the Appellant as assessee-in-default under section 201(1) of the IT Act	2011-12	7.3	NA	7.3	NA	NA
	2012-13	7.3	NA	NA	NA	7.3
	2013-14	7.3	NA	7.3	NA	NA
	2014-15	7.3	NA	NA	NA	NA
	2015-16	6.3	NA	6.3	NA	6.3

As regards TDS on Payments to Kulkarni Services with respect to renting of Generators						
The Lower authorities have treated Appellant as "assessee in default" under section 201(1) of the IT Act by holding that the Appellant has failed to deduct tax under section 194C of the IT Act with respect to renting of Generators.	2011-12	8.1	NA	NA	NA	NA
	2012-13	8.1	NA	NA	NA	NA
	2013-14	8.1	NA	NA	NA	NA
	2014-15	8.1	NA	NA	NA	NA
	2015-16	8.1	NA	NA	NA	NA
	2016-17	7.1	NA	NA	NA	NA

The Lower authorities have erred in treating the payment of rent towards hiring of generators as payment to contractors under Section 194C when the same is in the nature of renting of machine/plat/equipment under Section194Iandthe appellant is not able to deduct tax on the payment of rent towards generators under Section 1941 since the amount paid to the payee does not exceed the threshold limit prescribed.	2011-12	8.2.	NA	NA	NA	NA
	2012-13	8.2.	NA	NA	NA	NA
	2013-14	8.2.	NA	NA	NA	NA
	2014-15	8.2.	NA	NA	NA	NA
	2015-16	8.2.	NA	NA	NA	NA
	2016-17	8.2.	NA	NA	NA	NA
	2011-12	7.2.	NA	NA	NA	NA
As regards TDS on lower rate on payment to Sodexo SVC India Pvt. Ltd.						
The Lower Authorities have erred In treating the Appellant as 'assessee-indefault' under Section 201(1) of the IT Act by holding that the Appellant has deducted tax at source at a lower rate with respect to payment to Sodexo SVC India Pvt. Ltd.	2011-12	NA	NA	NA	NA	NA
	2012-13	NA	NA	7.1	NA	NA
	2013-14	NA	NA	NA	NA	NA
	2014-15	NA	NA	8.1	NA	8.1
	2015-16	NA	NA	NA	NA	NA
	2016-17	NA	NA	7.1	NA	7.1
The Lower Authorities have failed to appreciate that the Appellant has deducted the tax at source at the rates specified in the certificate issued under Section 197 of IT Act	2011-12	NA	NA	NA	NA	NA
	2012-13	NA	NA	7.2	NA	NA
	2013-14	NA	NA	NA	NA	NA
	2014-15	NA	NA	8.2	NA	NA
	2015-16	NA	NA	NA	NA	NA
	2016-17	NA	NA	7.1	NA	NA

The Learned CIT (Appeals)	2011-12	NA	NA	NA	NA	NA

has failed to appreciate that no order u/ s 201 (1)/201(1A) of the IT Act can be passed against the Appellant since the payee has filed the return of income and offered the same to tax.	2012-13	NA	NA	7.3	NA	NA
	2013-14	NA	NA	NA	NA	NA
	2014-15	NA	NA	8.3	NA	8.3
	2015-16	NA	NA	NA	NA	NA
	2016-17	NA	NA	7.3	NA	7.3
The Learned CIT (Appeals) is not justified in failing to seek information with respect to certificate under Section 197 obtained by Sodexo SVC India Pvt. Ltd by exercising powers under section 133 (6) of the IT Act before treating the Appellant as assessee-indefault' under Section 201 (1) of the IT Act.	2011-12	NA	NA	NA	NA	NA
	2012-13	NA	NA	7.4	NA	NA
	2013-14	NA	NA	NA	NA	NA
	2014-15	NA	NA	8.4	NA	8.4
	2015-16	NA	NA	NA	NA	NA
	2016-17	NA	NA	7.4	NA	7.4

4.1. Referring to the above table, Ld.Counsel submitted that **Ground No.1** are general in nature and therefore do not require any adjudication.

4.2. Ld.Counsel further submitted that payments made to Chinnu Graphics in Theerathahalli Branch, Chitradurga Branch and Davangere Branch are not pressed. Accordingly, following grounds that are not pressed:

Ground No. 3, 5, 6.3 (for assessment years 2011-12 to 2015-16) and **Ground no.5.3** (assessment year 2016-17); **Ground No. 6.8** (for assessment year 2011-12 to 2015-16) and **Ground No. 5.8** (for assessment year 2016-17); **Ground**

No. 6.11 for assessment year 2011-12 to 2015-16) and **Ground No. 5.11** (for assessment year 2016-17); **Ground No. 7.1**(for assessment years 2011-12 to 2015-16 pertaining to Theerathahalli, Chitradurga and Davengere) and **Ground No.6.1**(for assessment year 2016-17 pertaining to Theerathahalli, Chitradurga and Davengere); **Ground No. 7.2**(for assessment years 2011-12 to 2015-16 pertaining to Theerathahalli, Chitradurga and Davengere) and **Ground No.6.2**(for assessment year 2016-17 pertaining to Theerathahalli, Chitradurga and Davengere);

Ground No.8.1(for assessment years 2011-12 to 2015-16 pertaining to Theerathahalli, Chitradurga and Davengere) and **Ground No.7.1** (for assessment year 2016-17 pertaining to Theerathahalli);

Ground No. 8.2(for assessment years 2011-12 to 2015-16 pertaining to Theerathahalli, Chitradurga and Davengere) and **Ground No.7.2** (for assessment year 2016-17 pertaining to Theerathahalli)

Further, Ld.Counsel submitted that **Ground No.7.1-7.2** for assessment year 2012-13 pertaining to Chitradurga also is not pressed.

4.3. Ld.Counsel in **Ground No.2**, in respect of all branches, challenges validity of notice by alleging that, impugned notices have been issued by non jurisdictional officer and therefore are bad in law and without any jurisdiction.

4.4. In **Ground No.4**, for assessment years 2011-12 to 2015-16, for all branches, it is alleged that, the orders passed by Ld.AO under section 201 of the Act is barred by limitation.

4.5. On merits, only issue that remains to be adjudicated is in respect of following payments for short deduction of TDS, and that assessee should not be treated as, "assessee in default":

1. Cash Medical Benefit to its employees
2. Sodexo SVC India Pvt.Ltd,

4.6. Thus following issues arises for our consideration:

4.6.1. Issue I:

Ld.Counsel submitted that, notice issued and the impugned order passed are bad and without jurisdiction.

Ld.Counsel submitted that vide notification No. F No. 74/Jurdn/CIT(TDS)/Bang/2014-15 dated 15/11/2014, additional CIT/JCIT, (TDS) Hubli, has jurisdiction over Haveri, Shimoga, Davangere and Chitradurga districts. It has been submitted that all impugned orders passesvunder section 201(1) and 201(1A) of the Act, has been passed by ITO,(TDS) Ward, Davangere. He submitted that, there is no communication regarding transfer of jurisdiction, placed on record in support of the contention by revenue.

4.6.2. Issue II:

Impugned Orders passed under section 201(1) and 201(1A) of the Act for assessment years under consideration are barred by limitation.

Ld.Counsel that impugned orders passed by Ld.AO under section 201 for assessment years 2011-12 to 2015-16, it has been submitted that the same is barred by limitation for following reasons:

- Ld.Counsel submitted that time limit to pass order under the law that prevailed during the relevant period was 2 years from the end of the financial arrangements the statement under section 200 was filed. He submitted that the orders with respect to financial year 10-11 (assessment year 2011-12) and Q1 to Q3 financial year 2011-12 (assessment year 2012-13) is barred by limitation under unamended section and the same cannot be revived.
- Ld.Counsel further submitted that as Clause(3) to section 201 came into effect from 01/10/2014, it is not applicable for financial year 2012-13 and 2013-14, relevant to assessment year 2013-14 and 2014-15.
- Ld.Counsel submitted that amended time limit is not applicable to financial year 2014-15, relevant to assessment year 2015-16, since the financial year commenced by the time the amendment came into

effect on 01/10/2014, by way of Finance (No.2) Act, 2014.

- Ld.Counsel placed reliance on written submissions on both the Issue at page 16-67 of paper book.

4.6.3. Issue III& IV:

Assessee has been treated to be, assessee in default for short deduction of TDS on payments made to employees towads Cash Medical Benefits and payments made to Sodexo SVC Ltd.

4.7. Cash Medical Benefits to employees:

On merits, Ld.Counsel rebutted objections of authorites below by following submissions:

Observations by Ld. AO/Ld. CIT (A) in impugned orders	Rebuttals
Wage revision has happened in the organisation of assessee and letter filed by assessee before CBDT is dated 28/08/2001.	It has been submitted that there has not been any change in law or fact since 29/08/2001. And there is no material difference because of the wage revision.
CBDT letter dated 20/05/2002 suggests exemption under section 17 (2), whereas employees	It has been submitted that as long as the letter permits exemption under section 17 (2) the manner in which

claimed the exemption under section 10, which is not allowable for the reasons specified in para 3, 4, 5 of assessment order.	exemption has been claimed by the employees under wrong head does not matter.
In granting exemption under section 17 (2), there is no specific instruction for the period for which the board has accepted the request and allowed the exemption sought by assessee.	The very fact that CBDT did not specify the period indicates that the letter is open-ended and authorities below cannot decide to apply it or ignore it for any particular year at his *ipse dixit.*
Even if the letter is acceptable the same can be accepted for the relevant year for which they have applied for based on wage revision during that period and not for indefinite period for the amounts of CMB.	It has been submitted that the assumption that application dated 29/08/2001 was based on wage revision is not correct. Letter filed by assessee dated 29/08/2001 clearly states that until the previous year relevant to financial year 2001-02, Class I officers were eligible for medical benefit as per

	the "Reimbursement of Medical Expenses Scheme 1980". And that, during the relevant financial year being 2001-02, the wage agreement was replaced by Cash medical benefit at the rates specified.
Authorities below notice that exemption was not claimed by assessee during financial year 2009-10. Authorities below thus observed that either employees have not claimed the exemption during the year or they have not received the CMB for the period. It shows that LIC itself discontinued the practice at some point of time.	It has been submitted that such observation is factually incorrect and is based on surmises and conjunctures. Ld. counsel relied on form 16 issued to its employees for financial year 2009-10 which is placed at page 223 of paper book filed before us.
Medical allowance is a fixed component that employee receives as part of salary,	It has been submitted that application of assessee before CBDT dated

that is taxable as salary income. No bills are required to be submitted for taking this allowance that is what happened in the instant case.	29/08/2001 and subsequent approval by CBDT dated 20/05/2002 clearly states that what was given was a fixed medical allowance. The CBDT approval also has been issued with the understanding that the allowance received by employees are in the nature of fixed medical allowance. Approval of CBDT only requires assessee to be satisfied about the claim which the assessee duly complied by obtaining declarations from its employees. It has been submitted that the declarations of the employees submitted before authorities below have not been doubted.
Assessee has not produced	There is no requirement of

any renewal letter of the exemption for relevant period for which the proceedings were pending before the authorities below.	annual renewal. This is clear from receipt in practice which is evident from approvals dated 02/01/1991, 17/03/1994 and 25/05/2002 as observed by Ld.CIT(A) in his order.
LIC is not furnish any proof in support of its claim that amounts are actually spent for medical treatment of its employees.	It has been submitted that the very reason for making application dated 29/08/2001 before CBDT was due to administrative difficulties faced by assessee in getting proof in support of its claim of medical expenditure. The letter clearly expresses the work involved in processing and making payment of medical bills which is an onerous exercise for disbursing the small amounts for purpose of allowing the same as non-

	taxable perquisite under section 17 (2) of the act. Considering the size of employee strength in the organisation assessee phased administrative difficulty in verifying individual claims with bills and evidences. This was the sole reason for its application and the subsequent approval received from CBDT. It is also been stated that the condition preceded and regarding scientific faction with the claim of medical expenditure was complied with by assessee on test checks and obtaining declarations from all claimants.

4.7.1. Ld.Counsel thus submitted that, assessee cannot be treated to be "assessee in default" for following reasons:

- It has been submitted that CBDT vide letter dated 21/01/1991, 17/03/1994, 06/02/2002 and 20/05/2002 extended the exemption to assessee. That the assessee for years under consideration did not deduct TDS on medical reimbursements relying on the CBDT letter dated 20/05/2002;
- That assessee has made bona fide estimate of salary and has took a possible view on exemption of medical reimbursement based on declaration filed by the employees. Reliance is also been placed on circular 15 dated 08/05/1969 issued by CBDT for purposes of calculation of tax deductible at source under section 192 based on self certification on the part of employee.
- That assessee is not obliged to obtain evidence or proof of medical expenditure from its employees, as per the decision of *Hon'ble Supreme Court* in case of *CIT vs ITI Ltd* reported in *(2009) 183 Taxmann 219* and *CIT vs Larsen and Toubro Ltd* reported in *(2009) 313 ITR 1.*
- It is also submitted that, even after insertion of clause (2D) to section 192, assessee is not obliged to deduct TDS as Rule 26C does not include medical reimbursement.
- That assessee did not deduct TDS on medical reimbursements based on the declaration obtained

from the employees. He placed reliance on following decision in support of this contention:

- CIT vs Asea Brown Boweri Ltd, in ITA No. 263/2002 (Karnataka High Court). SLP by revenue was dismissed in SLP (C) No. 24259 of 2004, Reported in (statutes) 2005 volume 277 of Income Tax Reports Page 2.
- CIT vs Larsen and Toubro Ltd reported in (2009) 313 ITR 1 (SC);
- State Bank of India vs ADDL, CIT reported in 2020-TIOL-871-ITAT-BANG
- *Hon'ble Gujarat High Court* in case of CIT vs Oil and Natural Gas Corporation Ltd., reported in 2020-TIOL-954-HC-AHM-IT
- *KS Chowdhri and others vs LIC of India reported in (2018) 409 ITR 258 (Delhi)*
- *ACIT vs Infosys BPO Ltd* reported in *(2013) 37 Taxmann.com 53*,
- *ACIT (TDs) vs Oracle India Ltd* reported in *(2013) 37Taxmann.com327*,
- *Karnataka Power Transmission Corporation Ltd vs ITO (TDS)* reported in *(2019) 102 Taxmann.com 245*, and
- *ACIT(TDS) vs SAP Labs India(P.)Ltd* reported in *(2013) 36 Taxmann.com 200*

- *Decision of Hon'ble Karnataka High Court in case of CIT vs Symphony Marketing Solutions India Pvt.Ltd., reported in (2016) 388 ITR 457*

- He also submitted that assessee has been granting medical reimbursement from decades together, initially as per reimbursement of medical expenses scheme 1980 which was subsequently replaced by Cash medical benefit at a particular rates applicable for Class I Officers and Class III & IV employees. It has been submitted that assessee has been paying Cash Medical Benefits to its employees (Class III & IV) for over three decades at varying rate.

4.8. Ld.Counsel filed detailed written submission in support of his contention on above issues placed at page 1-174 of paper book. He places reliance on the same. Ld.Counsel thus submitted that, assessee cannot be treated as "assessee in default" for the reason that amendment brought in by Finance Act 2015 by inserting sub section (2D) to section 192 of the Act, w.e.f. 01/06/2015, was not applicable for the relevant period for which appeals have been filed before this *Tribunal*. It was reiterated that assessee estimated the salary of its employees based on the approval granted by CBDT dated 20/05/2002. It is also been submitted that assessee has been deducting tax on the basis of employees declaration since 1991.

4.9. It is finally being submitted by Ld.Counsel that, assessee being a statutory corporation, cannot be presumed to act malafide. In support he placed reliance on following decisions of coordinate bench of this *Tribunal*:

- *ACIT vs Infosys BPO Ltd is reported in (2014) 150 ITD 132 (Bang)*
- *ACIT (TDs) vs Oracle India Ltd reported in (2013) 37Taxmann.com327,*
- *Karnataka Power Transmission Corporation Ltd vs ITO (TDS) reported in (2019) 102 Taxmann.com 245, and*
- *ACIT(TDS) vs SAP Labs India(P.)Ltd reported in (2013) 36 Taxmann.com 200*

5. On the contrary, Ld.Sr.DR submitted as under:

> *"The Respondent most respectfully submits as follows :*
> *2. In this case, the orders under section 201 (1)/201(1A) of the l.T.Act, 1961 (hereinafter referred to as 'the Act") were passed for the Assessment years 2011-12 to 2016-17. The appellant has raised the issue that it is combined and without application of mind. In this regard, It is submitted that the order u/s.201 of the Act was passed separately for each financial year and they are not combined whereas the formal letter u/s 129 of the Act regarding change in incumbent of the office, was sent combined.*
> *3. On the issue of limitation, the following points are submitted for kind consideration of the Hon'ble Bench.*
> *"Sub section 3 and subsection 4 of section 201 of the Act were insened by the Finance Act 2009 w.e.f.01.04.2010. Sub section 3 was substituted w.e.f 01.10.2014 which reads as under:*
> *"No order shall be made under subsection (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given."*

3.1. In view of the above, for the A. Y .2010-11, the order could be passed before 31 03.2018. Since the order is passed on 23.03 2018, there is no delay in passing the order as contended by the appellant.

4. The following are submitted in respect of the merits of the case i.e. the applicability of TDS on Cash Medical Benefits (CMB) provided by the employer. The cash medical benefits is the fixed amount given by the employer to the employee to meet the medical expenditure which is not exempt from income tax u/s.10 of the Act as mentioned in Form 16 issued by the deductor. It IS exempt if the same is spent for a medical treatment, whereas in this case the employees are not supposed to file any declaration for having spent the CMB The employees also have not declared this as Income and paid the taxes and it was claimed as exempt and the same was observed by the CIT (A) In para 6.4 of the order.

4.1 The CMB was given as a fixed allowance to the employees irrespective of the actual expenditure Incurred by the employees. So It forms part of the salary and it is the obligation of the employer to deduct TDS as per Section 192(1) of the Act which was not done by the appellant.

4.2. Even In the appellants own case, on the same issue, the Honourble ITAT Cuttack (unreported decision of LIC of India ,Rourkela vs ITO(TDS) ITA 219/CTK/2019 dated 17.02 2020), has decided the Issue against the assessee for the reason that It is the fixed pay component and there is no specific exemption given in the Act In respect of the same As the amount is paid as a component of the monthly payment, It is to be considered as the salary and the reasoning is the same that the payment should not precede the actual Incurring of the expenditure and it should be by way of reimbursement.

5. Hence, It is respectfully submitted that the same decision may be followed as the same is on the contended issue in the appellant's own case."

5.1. Ld.Sr.DR placed reliance on the decision of *Hon'ble Cuttack Bench* in case of *Branch Manager, LIC of India vs. ITO(TDS)* reported in *(2020) 119 taxmann.co 380*

6. We have perused submissions advanced by both sides in light of records placed before us. We have also considered detailed written submissions filed by Ld.Counsel and

Ld.Sr.DR along with catena of decisions supporting the proposed arguments by respective representatives.

6.1. Issue I(Ground No,2)

We note that plea regarding jurisdiction of Ld.AO, in issuing Notice has not been raised before Ld.CIT(A). However, assessment order refers to change in the incumbent office u/s 129 on 24/11/2017. Further we note that assessee participated in the assessment proceedings without raising any objection. Hence we are unable to appreciate the submission of Ld. Counsel.

We accordingly dismiss this ground raised by assessee.

6.2. Issue II(Ground No.4):

Ld.Counsel submitted that, orders passed by Ld.AO under section 201 of the Act for assessment years 2011-12 to 2015-16 is barred by limitation.

6.2.1 It has been submitted that assessee filed TDS returns for various branches under consideration as per following details:

Thirathahalli branch:

Assessment year 2011-12:

1st quarter ended on 30th of June date of filing of quarterly returns not available with assessee.

2nd quarter ended on 30th September, date of filing of quarterly return not available with assessee.

3rd quarter ended on 31 December, date of filing of return not available with assessee.

4th quarter ended on 31 March and quarterly return was filed on 28/06/2011.

Assessment year 2012-13:

1st quarter ended on 30th of June, date of filing of quarterly returns is 26/08/2011.

2nd quarter ended on 30th September, date of filing of quarterly return is 09/09/2011.

3rd quarter ended on 31 December, date of filing of quarterly return is 06/02/2012.

4th quarter ended on 31 March and date of filing of quarterly return is 15/05/2012.

Davangere:

Assessment year 2011-12:

1st quarter ended on 30th of June date of filing of quarterly returns not available with assessee.

2nd quarter ended on 30th September, date of filing of quarterly return not available with assessee.

3rd quarter ended on 31 December, date of filing of return not available with assessee.

4th quarter ended on 31 March date of filing of return not available with assessee.

Assessment year 2012-13:

1st quarter ended on 30th of June, date of filing of return not available with assessee.

2nd quarter ended on 30th September, date of filing of return not available with assessee.

3rd quarter ended on 31st December, date of filing of return not available with assessee.

4th quarter ended on 31st March date of filing of return not available with assessee.

Chitradurga

Assessment year 2011-12:

1st quarter ended on 30th of June date of filing of quarterly returns not available with assessee.

2nd quarter ended on 30th September, date of filing of quarterly return not available with assessee.

3rd quarter ended on 31 December, date of filing of return not available with assessee.

4th quarter ended on 31 March date of filing of return not available with assessee.

Assessment year 2012-13:

1st quarter ended on 30th of June, date of filing of return not available with assessee.

2nd quarter ended on 30th September, date of filing of return not available with assessee.

3rd quarter ended on 31st December, date of filing of return not available with assessee.

4th quarter ended on 31st March date of filing of return not available with assessee.

Shivamoga:

Assessment year 2011-12:

1st quarter ended on 30th of June date of filing of quarterly return is 07/07/2010.

2nd quarter ended on 30th September, date of filing of quarterly return is 04/10/2010.

3rd quarter ended on 31 December, date of filing of quarterly return is 08/01/2011.

4th quarter ended on 31 March date of filing of quarterly return is 28/04/2011.

Assessment year 2012-13:

1st quarter ended on 30th of June, date of filing of quarterly return is 04/07/2011.

2nd quarter ended on 30th September, date of filing of quarterly return is 10/10/2011.

3rd quarter ended on 31st December, date of filing of quarterly return is 10/01/2012.

4th quarter ended on 31st March date of filing of quarterly return is 18/04/2012.

Haveri

Assessment year 2011-12:

1st quarter ended on 30th of June date of filing of quarterly return is 06/12/2010.

2nd quarter ended on 30th September, date of filing of quarterly return is 06/12/2010.

3rd quarter ended on 31 December, date of filing of quarterly return is 28/01/2011.

4th quarter ended on 31 March date of filing of quarterly return is 21/07/2011.

Assessment year 2012-13:

1st quarter ended on 30th of June, date of filing of quarterly return is 26/07/2011.

2nd quarter ended on 30th September, date of filing of quarterly return is 13/10/2011.

3rd quarter ended on 31st December, date of filing of quarterly return is 12/01/2012.

4th quarter ended on 31st March date of filing of quarterly return is 11/04/2012.

6.2.2. It is submitted by Ld.Counsel that, time limit to pass orders under section 201 for financial year 2010-11 (assessment year 2011-12) and 1st three quarters for financial year 2011-12 (assessment year 2012-13), expired on 31/03/2014 under unamended section 201 (3)(i) of the Act. It was submitted that, Clause (3) by way of insertion of to section 201 was inserted by way of Finance (No.2) Act, 2014 and therefore not applicable to these assessment year.

6.2.3. He submitted that, there is no dispute to the fact that, assessee filed TDS returns. Only apprehension is regarding the date of filing in respect of first three quarters for assessmet years 2011-12 and 2012-13, in respect of Davangere and Chitradurga Branches, which assessee is not able to ascertain. It was submitted that, date of filing of Q1 – Q3 TDS returns for Thirthahalli Branch is not

ascertainable. Therefore, we have to proceed on the basis that in assessee's case, the statements of TDS have been filed.

6.2.4. Keeping the aforesaid factual position in view it is necessary to examine the relevant statutory provisions. Section 201 lays down the consequences of failure to deduct tax at source or having deducted not remitted to the Government account, in its original form, did not provide any time limit for passing the order under sub-section (1) of section 201. Looking at the dispute arising out of proceedings being taken up and completed after lapse of substantial time in the absence of a time limit, Legislature through Finance Act, 2009, introduced sub- section (3) to section 201 providing limitation period of two years for passing the order under section 201(1) from the end of the financial year in which statement of TDS is filed by the deductor. And in a case where no statement is filed the limitation was extended to before expiry of four years from the end of financial year in which the payment was made or credit given. The aforesaid amendment was made effective from 1st April 2010.

6.2.5. Subsequently, by Finance Act, 2012, sub-section (3) of section 201 was again amended with retrospective effect from 1st April 2010. The aforesaid amended provision reads as under:—

"(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of —

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;

(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case:

Provided that such order for a financial year commencing on or before the 1st day of April 2007 may be passed at any time on or before the 31st day of March 2011."

As could be seen from a reading of the aforesaid provision, only change that was effected from the earlier provision was, the limitation period of four years, in case of a deductor who did not file TDS statement. In such case, the limitation was extended to six years from four years. Whereas, in case of a deductor who filed TDS statement, the limitation period of two years remained unchanged.

(emphasis supplied)

6.2.6. Aforesaid sub-section (3) of section 201 was again amended by Finance Act, 2014, w.e.f. 1st October 2014 by substituting the earlier provision as under:—

"(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given."

Thus, as could be seen from the aforesaid amended provision, a uniform limitation period of seven years from the end of relevant financial year wherein payments made or credit given was made applicable.

The issue before us is, whether the un-amended sub-section (3) which existed before introduction of amended sub-section (3) by Finance Act, 2014, will apply to assessee's case for assessment years under consideration or not.

6.2.7. It is the case of the assessee that, since, clause (i) of sub-section (3) of section 201 is applicable to the assessee and limitation period of two years expired by the time provision was amended by Finance Act, 2014, the extended period of limitation of seven years as per the amended provision will not apply. Whereas, it is the case of the Revenue that the amended sub-section (3) brought into the statute by Finance Act, 2014, will apply retrospectively, hence, orders passed by Ld.AO under Section 201 of the Act, are within the period of seven years, and are valid.

6.2.8. It is a fact on record that, by the time the amended provisions of sub-section (3) was introduced by Finance Act, 2014, the limitation period of two years as per clause (i) of sub- section (3) of section 201 (the un-amended provision) already expired. Ld.Sr.DR submitted that the amended provision of sub-section (3) of section 201 by referring to the object for making such amendment and on the reasoning that the said provision being a machinery provision will apply retrospectively. However, on a careful perusal of the object for introduction of the amended provision of sub-section (3), we do not find any material to hold that the legislature intended to bring such amendment with

retrospective effect. If the legislature intended to apply the amended provision of sub-section (3) retrospectively it would definitely have provided such retrospective effect expressing in clear terms while making such amendment. This view gets support from the fact that, while amending sub-section

(3) of section 201 by Finance Act, 2012, by extending the period of limitation under sub-clause (ii) to six years, the

legislature gave it retrospective effect from 1/4/2010. Since, no such retrospective effect was given by the legislature while amending sub-section (3) by Finance Act, 2014, it has to be construed that the legislature intended the amendment made to sub-section (3) to take effect from 1/10/2014, only and not prior to that.

6.2.9. *Hon'ble Supreme Court* in *Vatika Township Pvt. Ltd.* reported in *367 ITR 466*, while examining the

principle concerning retrospectivity of an amendment brought by statutory provisions, *Hon'ble Court* observed that, unless a contrary intention appears, a legislation is presumed not to be with retrospective operation. *Hon'ble Court* observed, legislations which modified accrued rights or which impose obligations or imposes new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a

retrospective effect. It was also observed, if a provision is not for the benefit of assessee, but, imposes some burden or liability, the presumption would be that, it will apply

prospectively. The rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

6.2.10. This view is supported by following decisions:

- *Hon'ble ITAT Mumbai in case of Sodexo SVC India Pvt.Ltd reported in (2018 92 Taxmann.com 260*
- *ACIT vs.Acer India Pvt.Ltd in ITA No. 2570 to 2572/Bang/2017 for assessment year 2009-10 to 2011-12 by order dated 14/09/2019.*

6.2.11. *Hon'ble Gujarat High Court*, in case of *Tata Teleservices vs.UOI* reported in *(2016) 385 ITR 497*, on identical issue extensively dealt on the issue of retrospective applicability of the provisions by applying principles laid down by *Hon'ble Supreme Court* in number of cases. *Hon'ble Gujrat High Court* held as under:—

> *"15.00. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201(3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering the fact that wherever legislature wanted to give retrospective effect so specifically provided while amending section 201(3) (ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held*

that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices/summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted."

No contrary decision has been brought to our notice by the Ld.Sr.DR.

6.2.12. Therefore, considering the principle laid down by the *Hon'ble Supreme Court* in various decisions, as well as, ratio laid down by *Hon'ble Gujarat High Court(supra)* in the decisions referred to above and decisions of *Coordinate bench of this Tribunal* as well as *Hon'ble Mumbai ITAT*, which are directly on the issue, we hold that orders passed by Ld.AO under section 201(1) and 201(1A) for financial year 2010-11 (assessment year 2011-12) and 1st three quarters for financial year 2011-12 (assessment year 2012-13), expired on 31/03/2014 under unamended section 201

(3)(i) of the Act. Such orders having been passed after expiry of two years from the financial year wherein TDS statements were filed by the assessee under section 200 of the Act, is therefore barred by limitation, hence, has to be declared as null and void.

Accordingly Ground No.4 raised by assessee for assessment years 2011-12 and 2012-13 stands allowed.

As we have quashed and set aside the impugned orders for assessment years 2011-12 and 2012-13, the demand raised

u/s.201(1) and interest levied under section201(1A), by Ld.AO for assessment years 2011-12 & 2012-13 stands deleted.

Accordingly, appeals filed by assessee for assessment years 2011-12 and 2012-13 stands allowed on legal issue raised.

6.2.13. Now coming to assessment years 2013-14 and 2014-15, Ld.Counsel submitted that, financial year for these period ended before insertion of Clause (3) to Section 201 of the Act. In our understanding assessment year 2013-14 and 2014-15 would also stand covered by the unamended provision being 201(3)(i), based on our observation herein above.

Accordingly Ground no.4 raised by assessee for assessment years 2013-14 and 2014-15 stands allowed.

As we have quashed and set aside the assessment orders for assessment years 2013-14 and 2014-15, the demand raised u/s.201(1) and interest levied under section201(1A), by Ld.AO for assessment years by Ld.AO for these years stands deleted.

Accordingly, appeals filed by assessee for assessment years 2013-14 and 2014-15 stands allowed on legal issue raised.

6.2.14. However same view cannot be applied for assessment year 2015-16 since the amendment was with effect from 01/06/2015.

We therefore dismiss Ground 4 for assessment year 2015-16

Assessment year 2015-16 &2016-17

6.3. At the outset, the Ld.Counsel submitted that, for assessment years 2015-16 & 2016-17, grounds pertaining to payment made to Chinnu Graphics for Theerthahalli, Chitradurga and Davangere and Payment made to Kulkarni services for Theerthahalli, branch stands not pressed by assessee.

Accordingly these grounds are dismissed as not pressed.

Issue III Payment made towards Cash Medical Benefit (Ground No. 6.1-6.2, 6.4-6.7,6.9-6.10 and 5.1-5.2, 5.4-5.7, 5.9-5.10 for assessment years 2015-16 & 2016-17 respectively) :

On Merits, Ld.Counsel submitted that, the assessee cannot be considered as "assessee in default" for non deduction of TDS on payments made to employees towards Cash Medical Benefit in respect of all branches.

6.3.1. Admittedly, it has been submitted that:

- payment has been made by assessee without any bills.
- It is also submitted that, payments made to employees are less than the limit prescribed under *section 17(2) Proviso (v)* of the Act.

- Further, it is submitted that the employees have submitted self attested declaration of expenses having incurred, placed at page 224 -228 of paperbook.
- That TDS was not deducted by relying on CBDT letter dated 20/05/2002, placed at page 118-121 of paperbook.
- It is also submitted that authorities below erred in observing that assessee discontinued the practice in financial year 2009-10.

The dispute in these appeals are regarding obligation of assessee to deduct tax at source on cash medical benefit paid to its employees.

6.3.2. Admittedly, amounts paid as medical benefits in the nature of perquisite falling within the definition given *under section 17 (2) (iv) Proviso (v)* of the Act. Section 192(1) of the Act casts obligation on the part of person responsible for paying income chargeable under the head "salaries" to deduct tax at source, at the time of payment. Section 192 (1) of the Act reads as under:—

> *"192. Salary.—(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made on the estimated income of the assessee under this head for that financial year."*

6.3.3. A perusal of section 192 of the Act, indicates that the person responsible for paying any income chargeable under the head "Salaries" shall be liable to deduct tax at source at

the time of payment on an estimate basis. Items of income that are chargeable to tax under the head income from "Salaries" are laid down in section15 to 17 of the Act.

6.3.4. Section 15 of the Act provides that income described therein shall be chargeable to tax under the head "Salaries", and income described therein consists of salary from the employer or former employer falling in three categories.

Section16 of the Act contains deductions to be made from salaries.

And, section 17 of the Act is inclusive definition of "salary" for purposes of Section 15, Section 16 and Section 17 of the Act which, along with other items, includes "perquisite" and these terms are also separately defined therein.

Sec.17 of the Act, that defines "Salary", "perquisite" and "profits in lieu of salary" as under:

"For the purposes of sections 15 and 16 and of this section -(1) "Salary" includes-

……..

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

…….

(2) "perquisite" includes-……..

(iv) any sum paid by the employer in respect of any obligation which but for such payment, would have been payable by the assessee; and

……..

***Provided** that nothing in this clause shall apply to,-*

…….

(v) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family other than the treatment

referred to in clauses (i) and (ii); so, however, that such sum does not exceed fifteen thousand rupees in the previous year.

6.3.5. In present appeals before us, medical reimbursement is paid by assessee to its employee for medical treatment of the employee or his family members. It is stated that, the payments to employees by assessee include a component towards medical expenditure that are paid every month. This sum, when paid is considered as part of taxable salary by assessee. Section 192(1) of the Act, requires tax to be deducted at average rate of income-tax in force on estimated income under the head salaries. The person making payment has to make an honest estimation of income under the head 'salary', payable by him to his employee at the time of payment. The person making the payment has to take into consideration various deductions permitted under the Act under Chapter VIA of the Act, as also exempt income under Sec.10 of the Act.

6.3.6. The case of Ld.AO is that, medical reimbursement should be paid at the time the expenditure is incurred or after the expenditure is incurred by way of reimbursement and not at an earlier point of time. If it is so paid, then, even though the payment would not form part of taxable salary of an employee, the employer has to deduct tax at source treating it as part of salary. The case of assessee is that, it's obligation is to make an "estimate" of the income under the

head "salaries" and such estimate has to be a *bona fide* estimate.

No tax can be recovered from the employer on account of short deduction of tax at source under section 192(1), if a bona fide estimate of salary taxable in the hands of the employee is made by the employer. Ld.Counsel referred to and relied on clause (1) of section 192, reproduced herein above. Such is the ratio of laid down in following decisions.

- *ACIT(TDS) vs. SAP Labs India Pvt.Ltd reported in (2013) 36 taxmann.com 200(Bang.Trib.)*
- *CIT v. Nicholas Piramal India Ltd., reported in (2008) 169 Taxman 233 (Bom.);*
- *CIT v. Semiconductor Complex Ltd.. reported in (2007) 160 Taxman 384 (Punj. & Har.)*
- *CIT v. HCL Info System Ltd. (2005) 146 Taxman 227 (Delhi)*
- *CIT v. Oil and Natural Gas Corpn. Ltd. (2002) 254 ITR 121/125 Taxman 698 Guj)*
- *ITO v. Gujarat Narmada Valley Fertilizers Co. Ltd. (2000) 113 Taxman 586 (Guj.)*
- *CIT v. Nestle India Ltd. (2000) 109 Taxman 403 (Delhi)*
- *Gwalior Rayon Silk Co. Ltd. v. CIT (1983) 14 Taxman 99 (MP)*
- *ITO v G. D. Goenka Public School (No. 2) (2008) 23 SOT 77 (Delhi)*
- *Usha Martin Industries Ltd. v. Asstt. CIT (2004) 86 TTJ 574 (Kol.)*
- *Nestle India Ltd. v. Asstt. CIT (1997) 61 ITD 444 (Delhi)*
- *Indian Airlines Ltd. v Asstt. CIT (1996) 59 ITD 353 (Mum).*

6.3.7. Further we note that, assessee relied on letter issued by CBDT dated 20/05/2002 granting exemption, placed at page 219 of paperbook. It is very clear from the letter that CBDT clearly understood the Cash Medical Benefit, to be in the nature of fixed medical allowance, and that, the fixed medical allowance is for the expenditure, which is both actually incurred or to be incurred. The letter also states

that, as long as assessee is satisfied that the expenditure is actually incurred, CBDT do not have any objection in extending the exemption *under section 17(2), Proviso (v)* of the Act. The said letter was issued by CBDT in response to the submissions made by assessee vide letter dated 29/08/2001, placed at page 216-218 of paperbook. Under such circumstances it was not right on part of authorities below to reject the contention of assessee for the reason that medical allowance extended by assessee to its employee was fixed component as a part of salary against which no bills were submitted. In our view, basis for rejecting the contention of assessee is contrary to the CBDT approval granted to assessee.

6.3.8. It is submitted note that, the satisfaction of assessee is based on declaration given by its employees. Section 192 as it stood during relevant period reads as under:

B.—Deduction at source

Salary.

192. *(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.*

(1A) Without prejudice to the provisions contained in sub-section (1), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (2) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

(1B) For the purpose of paying tax under sub-section (1A), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (1A), and the tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries" as per the provisions of sub-section (1), and shall be subject to the provisions of this Chapter.

6.3.9. The Income-tax Act, by virtue of sub-section (1) of section 89, empowered Ld.AO to grant relief, in cases where payment of salary and other dues was received by an employee in any one financial year, for more than twelve months. The said sub-section reads as follows :

"89. Relief when salary, etc., is paid in arrears or in advance.—(1) Where, by reason of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Income-tax Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed."

6.3.10. This sub-section required an employee to move an application before the ITO to grant such relief as may be prescribed while the prescription of the relief has been made under Rule 21A(2) of the Income-tax Rules, which came to be inserted by I.T. (Amendment) Rules, 1972 with effect from April 1, 1971. This situation created great hardship and harassment for the employees and entailed an unnecessary exercise. The Legislature, therefore, in its wisdom, inserted new sub-section (2A) in section 192 with

effect from June 1, 1987 incorporating therein the relief permissible in section 89(1) to be granted by the employer.

6.3.11. Section 192(2A) permits the employer to grant relief under the provisions of section 89(1), reads as follows :

> *(2A) Where the assessee, being a Government servant or an employee in a [company, co-operative society, local authority, university, institution, association or body] is entitled to the relief under sub-section (1) of section 89, he may furnish to the person responsible for making the payment referred to in sub-section (1), such particulars, in such form and verified in such manner as may be prescribed, and thereupon the person responsible as aforesaid shall compute the relief on the basis of such particulars and take it into account in making the deduction under sub-section (1).*

6.3.12. This section 192(2A) was applicable for relevant assessement years under consideration. Assessee has to satisfy itself regarding incurring of medical expenses by the employee or for the family members of the employees.

6.313. Subsequently, vide Finance Act 2015, w.e.f. 01/06/2015 inserted new clause (2D) to section 192, that reads as under:

> *(2D) The person responsible for making the payment referred to in sub-section (1) shall, for the purposes of estimating income of the assessee or computing tax deductible under sub-section (1), obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.*

6.3.14. Above clause (2D) requires employer to obtain evidence of proof or particulars of prescribed claims under the provisions of the Act from the employee in such form

and manner as may be prescribed for estimating income of the employee.

6.3.15. The memorandum explaining insertion of clause (2D) to section 192 by Finance Bill 2015, reads as under:

> ***Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)***
>
> *Under Chapter XVII-B of the Act, a person is required to deduct tax on certain specified payment at the specified rate if the payment exceeds the specified threshold. The person deducting tax ('the deductor') is required to file a quarterly Tax Deduction at Source (TDS) statement containing the details of deduction of tax made during the quarter by the prescribed due date. Similarly, under Chapter XVII-BB of the Act, a person is required to collect tax on certain specified receipts at the specified rates. The person collecting tax ('the collector') also is required to file a quarterly Tax Collection at Source (TCS) statement containing the details of collection of tax made during the quarter by the prescribed due date.*
>
> .....
>
> *Under section 192 of the Act, the person responsible for paying (DDO) income chargeable under the head "salaries" under the Act is authorised to allow certain deductions, exemptions or allowances or set-off of certain loss as per the provisions of the Act for the purposes of estimating income of the assessee or computing the amount of the tax deductible under the said section. The evidence/proof/particulars for some of the deductions/exemptions/allowances/set-off of loss claimed by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from self occupied house property etc. is generally not available with the DDO. In these circumstances, the DDO has to depend upon the evidence/particulars furnished, if any, by the employees in support of their claim of deductions, exemptions, etc. As the existing provisions of the Act do not contain any guidance regarding nature of evidence/documents to be obtained by the DDO, there is no uniformity in the approach of the DDO in this matter. In order to bring clarity in this matter, it is proposed to amend the provisions of section 192 of the Act to provide that the person responsible for paying, for the purposes of estimating income of the assessee or computing tax deductible under section*

192(1) of the Act, shall obtain from the assessee evidence or proof or particulars of the prescribed claim (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner.

……."

(emphasis supplied)

6.3.16. On comparing the pre and post insertion of sub clause(2D), in consonance with Memorandum of Explanation, it is clear that, during relevant period under consideration, the assessee was under a bonafide belief that there was no requirement for employer to collect and examine the supporting evidence to the declaration submitted by employees. The Ld.Counsel submitted that, assessee granted exemption based on CBDT letter dated 20/05/2002 and self attested declaration by the employees of having incurred the expenditure.

6.3.17. Ld.Counsel further submitted that Clause (2D) to section 192, inserted by Finance Act, 2015, w.e.f.01/06/2015, refers to Rule 26C of IT Rules and Form No.12BB. Our attention was drawn to the said Rules. It was submitted that Rule 26C was inserted by Notification No.SO 1587(E) [NO.30/2016(F.NO.142/29/2015-TPL)] dated 29/04/2016, that read as under:

Furnishing of evidence of claims by employee for deduction of tax under section 192.

26C. *(1) The assessee shall furnish to the person responsible for making payment under sub-section (1) of section 192, the evidence or the particulars of the claims referred to in sub-rule (2), in Form No.12BB for the purpose of estimating his income or computing the tax deduction at source.*

(2) The assessee shall furnish the evidence or the particulars specified in column (3), of the Table below, of the claim specified in the corresponding entry in column (2) of the said Table:—

Table

S.NO.	*Nature of claims*	*Evidence or particulars*
1	*House Rent Allowance*	*Name, address and permanent account number of the landlord/landlords where the aggregate rent paid during the previous year exceeds rupees one lakh*
2	*Leave travel concession or assistance*	*Evidence of expenditure.*
3	*Deduction of interest under the head "Income from house property".*	*Name, address and permanent account number of the lender.*
4	*Deduction under Chapter VI-A.*	*Evidence of investment or expenditure*

It was submitted by the Ld.Counsel that even after insertion of clause (2D) to section 192, in the absence of specific requirement under Rule 26C to collect evidence in respect of Medical expenses, the employer is not obliged to collect evidence/proof from the employee with respect to medical reimbursement that falls under *clause (v) of Proviso to section 17(2).* Reliance was placed on decision of *Hon'ble Supreme Court* in case of *CIT vs.ITI Ltd (supra)* and *ACIT vs L&T Ltd(supra).* Placing reliance on following observation of *Hon'ble Supreme Court* in case of *ACIT vs. Bharat V.Patel* reported in *(2018) 92 taxmann.com 336,* it was submitted

that, in the absence of specific provision, assessee cannot be subjected to tax.

> ***"10.*** *It is a matter of record that the Respondent was employed as the Chairman-cum-Managing Director of the (P&G) India Ltd. at the relevant time and the said company is the subsidiary of (P&G) USA through Richardson Vicks Inc. USA and that (P&G) USA owned controlling equity. It is an undisputed fact that the Respondent was working as a salaried employee. The (P&G) USA was the company who had issued the Stock Appreciation Rights (SARs.) to the Respondent without any consideration from 1991 to 1996. The said SARs were redeemed on 15.10.1997 and in lieu of that the Respondent received an amount of Rs 6,80,40,724/- from (P&G) USA. However, when the Respondent filed his return, he claimed this amount as an exemption from the ambit of Income Tax. The issue involved in this appeal is in respect of Rs 6,80,40,724/-made on account of amount received on redemption of Stock Appreciation Rights.*
>
> ***11.*** *The Tribunal was of the view that the stock options are capital assets and such assets in the instant case acquired for consideration, hence, gain arising therefrom is liable to capital gain tax. However, the stand of the Revenue before the Tribunal was that the amount in question is taxable as perquisite under Section 17(2)(iii) of the IT Act or in alternatively under Section 28(iv) of the IT Act instead of capital gains. The High Court also upheld the view of the Tribunal but the High Court disagreed that such capital gains arose to the Respondent on redemption of Stock Appreciation Rights since there was no cost of acquisition involved from the side of the Respondent. The meaning of the word perquisite for the instant case is given under Section 17(2) of the IT Act. The Revenue alternatively contended that the case of the Respondent should come under the ambit of Section 28(iv) of the IT Act.*
>
> ***12.*** *It is apposite to note here that, particularly, in order to bring the perquisite transferred by the employer to the employees within the ambit of tax, legislature brought an amendment under Section 17 of the IT Act by inserting Clause (iiia) in Section 17(2) of the IT Act through the Finance Act, 1999 (27 of 1999) with effect from 01.04.2000, which was later on omitted by the Finance Act, 2000. The said Clause (iiia) as it was then is reproduced herein below:*
>
> *'(iiia) the value of any specified security allotted or transferred, directly or indirectly, by any person free of cost or at concessional rate, to an individual who is or has been in employment of that person:*

Provided that in a case where allotment or transfer of specified securities is made in pursuance of an option exercised by an individual, the value of the specified securities shall be taxable in the previous year in which such option is exercised by such individual.

Explanation- For the purposes of this clause,—

(a) "cost' means the amount actually paid for acquiring specified securities and where no money has been paid, the cost shall be taken as nil;

(b) "specified securities" means the securities as defined in clause(h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and includes employees' stock option and sweet equity shares;

(c) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called; and

(d) "value" means the difference between the fair market value and the cost for acquiring specified securities;'

13. *The intention behind the said amendment brought by the legislature was to bring the benefits transferred by the employer to the employees as in the instant case, within the ambit of the Income Tax Act, 1961. It was the first time when the legislature specified the meaning of the cost for acquiring specific securities. Only by this amendment, legislature determined what would constitute the specific securities. By this amendment, legislature clearly covered the direct or indirect transfer of specified securities from the employer to the employees during or after the employment. On a perusal of the said clause, it is evident that the case of the Respondent falls under such clause. However, since the transaction in the instant case pertains to prior to 01.04.2000, hence, such transaction cannot be covered under the said clause in the absence of an express provision of retrospective effect. We also do not find any force in the argument of the Revenue that the case of the Respondent would fall under the ambit of Section 17(2) (iii) of the IT Act instead of Section 17(2) (iiia) of the IT Act. It is a fundamental principle of law that a receipt under the IT Act must be made taxable before it can be treated as income. Courts cannot construe the law in such a way that brings an individual within the ambit of Income Tax Act to pay tax who otherwise is not liable to pay. In the absence of any such specific provision, if an individual is subjected to pay tax, it would amount to the violation of his Constitutional Right"*

It is submitted that, assessee thus made an honest estimation of TDS as per section 192(1) of the Act based on declaration filed by employees.

6.3.17. We note that, this *Tribunal* considered similar submission in case of *ACIT Vs. Infosys BPO Ltd.(supra)* and explained the law on the issue of *bonafide belief* in the matter of estimation of income under the head "salaries" for the purpose of Secc.192 of the Act, in the following manner:—

> *"26. It is no doubt true that TDS is to be made at the time of payment of salary and not on the basis of salary accrued. Sec.192(3) of the Act permits the employer to increase or reduce the amount of TDS for any excess or deficiency. We have already noticed that the fact that bills/evidence to substantiate incurring of expenditure on medical treatment up to Rs.15,000/- and the availing of the LTC by the employees and the fulfilment of the conditions contemplated by Sec.10(5) of the Act for availing exemption by the employees so availing LTC, have not been disputed by the AO. Even assuming the case of the AO, that at the time of payment the Assessee ought to have deducted tax at source, is sustainable; the Assessee on a review of the taxes deducted during the earlier months of the previous year is entitled to give effect to the deductions permissible under proviso (iv) to Sec.17(2) or exemption u/s.10(5) of the Act in the later months of the previous year. What has to be seen is the taxes to be deducted on income under the head 'salaries' as on the last date of the previous year. The case of the AO is that LTC and Medical reimbursement should be paid at the time the expenditure is incurred or after the expenditure is incurred by way of reimbursement and not at an earlier point of time. If it is so paid, then, even though the payment would not form part of taxable salary of an employee, the employer has to deduct tax at source treating it as part of salary, is contrary to the provisions of Sec.192(3) of the Act and cannot be sustained. The reliance placed by the AO on the expression "actually incurred" found in Sec.10(5) of the Act and proviso (iv) to Sec.17(2) of the Act, in our view cannot be sustained. In any event, the interpretation of the word "actually paid" is not relevant while ascertaining the*

quantum of tax that has to be deducted at source u/s.192 of the Act. As far as the Assessee is concerned, his obligation is only to make an "estimate" of the income under the head "salaries" and such estimate has to be a bonafide estimate.

27. The primary liability of the payee to pay tax remains. Section 191 confirms this. In a situation of honest difference of opinion, it is not the deductor that is to be proceeded against but the payees of the sums. To reiterate, the payment towards medical expenditure and leave travel is made keeping in view the employee welfare. The exclusion in respect of payment towards medical expenditure and leave travel is considered after verifying the details and evidence furnished by the employees. No exemption is granted in the absence of details and/or evidence. The exemption in respect of medical expenditure is restricted to expenditure actually incurred by the employees, or Rs. 15,000/-whichever is lower. The exemption is granted even if the payment precedes the incurrence of expenditure. The requirements/conditions of section 10(5) and proviso to section 17(2) are meticulously followed before extending the deduction/exemption to an employee. No tax can be recovered from the employer on account of short deduction of tax at source under section 192 if a bona fide estimate of salary taxable in the hands of the employee is made by the employer, is the ratio of the following decisions.

CIT v. Nicholas Piramal India Ltd (2008) 299 ITR 0356 (BOMBAY);
CIT v. Semiconductor Complex Ltd [2007] 292 ITR 636 (P&H)
CIT v. HCL Info System Ltd. [2006] 282 ITR 263 (Del)
CIT v Oil and Natural Gas Corporation Ltd [2002] 254 ITR 121 (Guj)
ITO v Gujarat Narmada Valley Fertilizers Co. Ltd [2001] 247 ITR 305 (Guj)
CIT v Nestle India Ltd (2000) 243 ITR 0435 (DEL)
Gwalior Rayon Silk Co. Ltd. v. CIT [1983] 140 ITR 832 (MP)
ITO v G. D. Goenka Public School (No. 2) [2008] 306 ITR (AT) 78 (Del)
Usha Martin Industries Ltd. V. ACIT (2004) 086 TTJ 0574 (KOL) Nestle India Ltd. v. ACIT (1997) 61 ITD 444 (Del)
Indian Airlines Ltd. v ACIT (1996) 59 ITD 353 (Mum)"

6.3.18. This *Tribunal* in case of *KPTCL vs.ITO* reported in *(2018) 93 taxmann.com 89*, following the above observations in *ACIT vs.Infosys BPO Ltd.(supra)*, held as under:—

"19. We have considered the rival submissions. In our view, the plea of the Assessee that it made a bona fide estimate of employee's salary by valuing the perquisites in the form of residential accommodation provided to the employees by valuing the same as if employees were employees of Central Govt. has to be accepted. In this regard, it is clear from the records that the position with regard to the assessee not being a Central govt. was brought to its notice by the department only in the proceedings initiated in 2013. Even thereafter, the Assessee has been taking a stand that its employees or employees of Central Govt. As held in several decision referred to by the ld. counsel for the Assessee, the obligation of the Assessee is only to make a bonafide estimate of the salary. In our view, in the facts and circumstance of the present case, assessee has made such an estimate. The Assessee's obligation u/s.192 is therefore properly discharged and hence proceedings u/s.201(1) & 201(1A) of the Act have to be quashed and are hereby quashed."

6.3.19. The above observation was in the context of treating the employees of KEB who became employees of KPTCL on its creation were equated with employees of the State Government and therefore the plea of bonafide belief while estimating income was accepted.

6.3.20. Reliance was placed on decision of *Hon'ble Karnataka High Court* in case of *CIT vs Symphony Marketing Solutions India Pvt. Ltd.,* reported in *(2016) 388 ITR 457*, wherein issue considered by Their Lordships was regarding per-diem allowance paid to the employees, as a part of salary, by *Symphony Marketing Solutions India Pvt. Ltd.,* which was not subject to deduction at source under section 192 by the employer therein. *Hon'ble Court* recorded following observations by this *Tribunal*:

***"3.** We may record that the Tribunal in the impugned order while considering the aforesaid aspect has observed at paragraphs 4.3.1 to 4.3.3 as under :—*

"4.3.1 We have heard the rival submissions and perused and carefully considered the material on record ; including the judicial pronouncements and Government of India Circulars cited and referred to. The facts of the matter in respect of payment of per diem by the assessee to its employees travelling for business/official trips to USA and Europe at $ 50 and $ 75 respectively to cover actual expenses of meals, travel, laundry and other miscellaneous expenses etc. are not disputed and the contrasting views of both the assessee and the Assessing Officer thereon ; as to the same being reasonable and exempt under section 10(14) of the Act or liable to deduction of tax under section 192 of the Act have been laid out briefly at paras 2.1 to 2.3 of this order (supra).

4.3.2 We find that the learned Commissioner of Income-tax (Appeals)'s in their impugned orders had considered the decisions of the Income-tax Appellate Tribunal, Kolkata Bench in the case of Saptarshi Ghosh (supra) and decision of the Mumbai Bench of the Income-tax Appellate Tribunal in the case of Madanlal Mohanlal Narang (supra) wherein it was held that it is not open to the Revenue to call for details of expenditure incurred unless the per diem allowance paid is disproportionately high compared to the salary received or with regard to the duties performed by the employee. In the context, the learned Commissioner of Income-tax (Appeals) also examined the Circular No. Q/FD/695/1/90, dated November 11, 1996 and Circular No. Q/FD/695/2/2000, dated September 21, 2010 issued by Ministry of External Affairs, Government of India and came to the conclusion that the per diem allowance of $ 50 to $ 75 paid by the assessee to its employees on official trips to USA and Europe to be reasonable and that the same would be covered as exempt under section 10(14) of the Act. In the impugned order for the assessment year 2009-10 dated September 25, 2014, the last of the impugned orders to be passed, the learned Commissioner of Income-tax (Appeals) held as under at 3 to 5 as under :

> *'3. I have carefully considered the facts, the appellant's submissions and perused the impugned order. I agree with the argument of learned authorised representative that the per diem allowance paid to its employees qualifies for exemption under section 10(14)(i) of the Act read with rule 2BB(1). Clause (b) of rule 2BB(1) refers to any allowance to meet the ordinary daily charges incurred by an employee on account of absence from normal place of duty. There is no monetary limit prescribed and hence unless such allowance is said to be fictitious or abnormally high or otherwise taxable*

in the hands of the employee, no liability could be fastened under section 192 on the employer to deduct tax on such allowance. Moreover, it is also not possible to collate bills for every minuscule expenses and mere non-collation of bills in support of amount expenses cannot prevail over the fact of incurring such expenses. It is found that the Assessing Officer has not gone through the Central Board of Direct Taxes Circular wherein it is clarified that where specific allowances are reasonable with reference to the nature of the duties performed by the employee 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.

3.1 Useful reference could also be made to the following decisions:

1. *CIT v. Larsen and Toubro Ltd.[2009] 313 ITR 1 (SC)*
2. *CIT v. I.T.I. Ltd.[2009] 221 CTR (SC) 619*
3. *CIT v. Goslino Mario[2000] 241 ITR 312 (SC) ; and*
4. *CIT v. Micro Land Ltd.[2010] 323 ITR 670 (Karn.)*

To the question as to whether assessee-employer is bound to collect and verify proof of journey and actual expenditure incurred for section 10(5) before granting exemption under that provision, it was held by the hon'ble courts that there is no such requirement in the law. The provision of section 10(14) and 10(5) are somewhat pari materia, in the sense that proviso to section 10(5) also puts a ceiling that such allowance shall not exceed the actual expenditure. In any case, the allowance cannot be denied exemption under section 10(14) and assessee-employer said to be in default for failure to deduct tax on the ground of absence of proof of such actual expenses on food, travel, laundry incurred by the employees, while performing duties in a foreign country.

3.2 In view of the above reasons, also accepted in case of appellant for the assessment year 2011-12 (appellate order dated October 17, 2013) where it was held that the per diem allowance is reasonable at $ 50 to $ 75 for the US and Europe, and would be covered under section 10(14). The appellant could not be said to be in default within the meaning of section 201(1) for not including such attempt allowance for the purpose of section 192. The Assessing Officer is directed to exclude such amounts of per diem allowances form the amounts liable to deduction of tax at source under section 192.

Appellate Grounds of appeal (Nos. 1.1 to 1.4) on the issue are allowed.

4. The other ground (No. 2) of appeal raised is with regard to levying of interest under section 201(1A), amounting to Rs. 12,93,117 relating to default under section 201(1) read with section 192. Since, the assessee has been held to be not in default under section 201(1) with regard to the per diem allowances paid the interest under section 201(1A) is also held to be not chargeable, and hence deleted.

5. As a result, the appeal is allowed.'

4.3.3 Before us, except for raising the grounds of appeal and supporting the views of the Assessing Officer, which are not tenable in the light of the judicial pronouncements of the Tribunal and the Circulars of Ministry of External Affairs, Government of India referred to above, the Revenue has not been able to controvert the findings in the impugned orders of the learned Commissioner of Income-tax (Appeals). Following the decision of the hon'ble Income-tax Appellate Tribunal, Kolkata Bench in the case of Saptarshi Ghosh (supra) wherein it has been held that there is no requirement for the assessee-employer to collect and verify the proof of journey, actual expenditure incurred in respect of per diem allowance and further that it is not open to the Revenue to call for details of expenditure unless the allowances are highly disproportionate or unreasonable to the salary received or nature of duties performed. We also concur with the findings of the learned Commissioner of Income-tax (Appeals) that, in the light of the circulars issued by the Ministry of External Affairs, Government of India dated November 11, 1996 and September 21, 2010 (supra), the per diem allowance of $ 50 to $ 75 paid to employees on their official trips to USA and Europe are reasonable and would be exempt under section 10(4) of the Act. In this view of the matter, we uphold the decisions of the learned Commissioner of Income-tax (Appeals), that since the assessee has been held to be not in default under section 201(1) of the Act with regard to per diem allowances paid, interest under section 201(1A) of the Act is also consequently not chargeable. Consequently, the Grounds at S. Nos. 1 to 4 raised by the Revenue are rejected for all the three assessment years 2009-10 to 2011-12."

4. *The aforesaid shows that the Tribunal has followed its earlier judicial pronouncement of Kolkata Bench and has also considered circulars issued by the Ministry of External Affairs, Government of India instructing that if the amount which is stated to have been paid as per diem allowance was not highly disproportionate or not unreasonable, the further verification of the actual expenditure is*

not to be considered. The resultant effect is that the amount is to be treated as by way of reimbursement of expenses.

5. *Mr. Aravind, learned counsel appearing for the appellant, raised the contention that as per section 17(1)(iv) of the Income-tax Act, 1961 ("the Act" for short), the amount would fall in the category of perquisites in addition to the salary or wages and therefore, the tax was deductible at source. However, when he was confronted with the nature of the amount as to whether such amount is taxable or not, he submitted that as per section 10(14) if it is by way of reimbursement, such amount would not be taxable. But it is his submission, the payment made cannot be treated as reimbursement because it is paid without verification of the expenses already incurred by the employee concerned.*

6. *Section 10(14) of the Act reads as under :*

> *"(14)(i) any such special allowance or benefit, not being in the nature of a perquisite within the meaning of clause (2) of section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent to which such expenses are actually incurred for that purpose ;*
>
> *(ii) any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living, as may be prescribed and to the extent as may be prescribed :*
>
> *Provided that nothing in sub-clause (ii) shall apply to any allowance in the nature of personal allowance granted to the assessee to remunerate or compensate him for performing duties of a special nature relating to his office or employment unless such allowance is related to the place of his posting or residence ;"*

The aforesaid shows that if any allowance or benefit not being in the nature of perquisite is granted to meet the expenses wholly, necessarily or exclusively incurred in performance of duties, to the extent to which such expenses are actually incurred would fall in the said category. It is the case of the assessee that the payment was not made as an allowance on par with the perquisites, but the case of the assessee was that the payment was made to meet the expenses incurred. When the payment is made to meet the expenses incurred and when not taxable under section 10(14) of the Act merely because the actual expenses were not verified, the character or nature of the payment would not be changed so as to include under section 17(2) of the Act. On the aspects of

verification, the Tribunal has relied upon not only its own decision but has further relied upon the Circular issued by the Ministry.

7. *In view of the above, we do not find, any substantial question of law, would arise for consideration, as canvassed. Hence, all the appeals are dismissed"*

6.3.21. Ld.Counsel also placed reliance on CBDT Circular No.15 dated 08/05/1969 and submitted that reimbursement on the basis of declaration by the employees is permissible. It was submitted that for purposes of calculation of tax deducted at source under section 192, self certification on the part of employee that expenditure have been incurred and has been used by the employee for purposes of self or family members was adequate. The Ld.Counsel placed reliance on the decision of *Hon'ble Gujarat High Court* in case of *CIT (TDs) vs Oil and Natural Gas Corporation Ltd* reported in *2020122 taxmann.com 159*. Their Lordships in this case considered The issue as to whether assessee exemption granted by assessee towards uniform allowance under section 10(14)(*i*) of the Act on the basis of self-certification given by the employees without verifying whether such expenditure had actually been incurred, fulfilled necessary condition. Assessee therein relied on Circular 15 issued by CBDT dated 08/05/ 1969 enabling the assessee for non-deduction of tax from the reimbursement allowance on the basis of utilisation certificate of the employee. Their Lordships observed as under:

"23. *In terms of the above Circular No. 15 dated 8-5-1969, for the purpose of calculation of tax deductible at source under section 192, self-certification on the part of the employee that the conveyance was owned by him and being used by him for the purposes of employment was adequate. The present case relates to uniform allowance, which as noticed earlier is exempt from tax under section 10(14)(i) of the Act read with rule 2BB(1)(f) of the rules to the extent to which such expenses are actually incurred for that purpose. Under the Act, the liability to the employer is to deduct tax at source to the extent of the taxable income of the employee. If any part of such income is exempt, there is no liability to deduct tax at source from such income. Since liability to pay tax under the Act is of the individual employee and the liability on the part of the employer is only to deduct tax at source, Circular No. 15 dated 8-5-1969 provides that self certification on the part of the employee is sufficient for the disbursing officer for calculation of the tax deductible at source. While the said circular relates to conveyances, the underlying principle can well be applied even in the case of uniform allowance. Therefore, if an employee gives a certificate certifying that he had incurred certain expenditure towards uniforms and maintenance thereof, insofar as the disbursing officer is concerned, that would be adequate while calculating the tax deductible at source. If the Assessing Officer has any doubt about the claim made by any individual employee, he can always take upon the issue during the course of assessment proceedings of such employee, inasmuch as, as rightly submitted by the learned counsel for the respondent, self certification is good enough for the employer not to deduct tax at source, it does not grant any immunity to the employee if the claim is incorrect. As held by this court in Oil & Natural Gas Corpn. Ltd. (supra), whether an employee actually incurs such amount for official purposes is relevant for assessment of such employee because the exemption operates in his terms and conditions of availing such exemption that is to be fulfilled by him. Whether the employee is able to substantiate his claim to exemption has no bearing on the estimate of income liable to tax to be made by the employer. Under the circumstances, there is no legal infirmity in the impugned order passed by the Tribunal in placing reliance upon the above circular for holding that self certification on the part of the employees was adequate for the assessee not to deduct tax from the reimbursement allowance towards expenditure incurred for uniforms.*

24. *In the light of the above discussion, this court is of the view that the impugned order passed by the Tribunal does not suffer from any legal infirmity warranting interference. The substantial question framed by this court while issuing notice is answered in the affirmative, that is, in favour of the assessee and against the revenue. The Income-tax Appellate Tribunal was right in law in confirming the order of the Commissioner of Income-tax (Appeals) deleting the additions made by the Assessing Officer under section 201(1) of the Income-tax Act, 1961, and consequential interest charged by the Assessing Officer in relation to the assessee's*

payments to its employees under the head of uniform allowance. The appeal, therefore, fails and is accordingly dismissed with no order as to costs."

Hon'ble Court followed its coordinate bench decision in case of *CIT v. Oil & Natural Gas Corpn. Ltd.,* reported in *[2002] 125 Taxman 698,* wherein *Hon'ble Court* held as under:

"5. We are of the opinion that in the facts and circumstances found by the tribunal no question of law referable to this court arises as the answer is evident. The tax at source in the case of an employee in receipt of salaries is deducted on the basis of estimate of income under the head "Salary" emanating from the employer. That estimate also include a fair estimate by the employer whether any amount paid by him is not likely to be subjected to tax under any provisions of the Income-tax Act. As we have noticed above, the evidence regarding operation of the scheme clearly attracted the provisions of sec. 10(14) inasmuch as reimbursement is granted for use of one vehicle owned and possessed by the employee for expenses incurred in undertaking official journeys and the payment is made on employee issuing a certificate that he has incurred more expenses than the amount which is being reimbursed to him at the end of the month. The fact that reimbursement upto a maximum limit and not more does not detract from the fact that expenses are being paid as far as employer is concerned towards reimbursing actual expenses incurred by the employee in undertaking official journeys upto the extent amount is actually reimbursed. Nor the fact that the employee, during the course of his assessment, is not found entitled to full benefit u/s 10(14), does in any way reflect on the estimate of income tax payable on income of the employee at the time when such amount is paid. Whether an employee actually incurs such amount for the official purposes is relevant for assessment of employee because exemption operates in his terms and conditions of availing such exemption that is to be fulfilled by him whether the employee is able to substantiate his claim to exemption has no bearing on estimate of income liable to tax to be made by the employer.

6. These findings do not give rise to any question of law. The fact that ultimately on the assessment of employees they have been found in not utilising the full amount received by them from the employer does not reflect in any manner on

the estimate of the employer at the end of each month about the income of the employee receiving from his employer liable to tax as per the mark it bears."

6.3.22. We note that Ld.AO/CIT(A) raised objection, that assessee discontinued granting of cash Medical Benefit to its employee for F.Y 2009-10, which is factually incorrect. We note that assessee has granted cash medical benefit for asst. year 2009-10. Ld.Counsel placed reliance on page 221-223, wherein Form 16 issued to an employee for F.Y:2009-10 is been placed, that revels sum of Rs.6,000/- was paid to the employee as medical benefit in the month of July 2009. Further from para 6.3 of CIT(A)'s order it is evident that assessee has been granting cash benefit to its assessee since 1991. We therefore reject this objection raised by authorities as it is based on surmises and conjunctions.

6.3.23. Before us, revenue has placed reliance on decision of *Hon'ble Cuttack Tribunal* in in case of *Branch Manager, LIC of India vs. ITO(TDS)* reported in *(2020) 119 taxmann.co 380*. On perusal of the said decision, we note that the letter issued by CBDT to assesse dated 20/05/2002, and the facts placed before us were not available for consideration before *Hon'ble Cuttack Tribunal.*

6.3.24. Coordinate bench of this *Tribunal* in various assessee's case(referred to herein above) upheld estimation of income under section 192(1) of the Act, which has also been approved by *Hon'ble Karnataka High Court* in case of

Infosys Technologies Ltd., reported in *(2007) 293 ITR 146.* This decision of *Hon'ble Karnataka High Court* has been affirmed by *Hon'ble Supreme Court* reported in *(2008) 297 ITR 167.*

6.3.25. Under section 192(1), the assessee is expected to make an honest and fair estimate of income and deduct tax at source. For assessment year 2015-16 and 2016-17, clause (2D) was applicable, however in the absence of specific requirement under Rule 26C, assessee was not obliged to collect evidence/ proof from the employees for reimbursement of medical expenditure. The assessee has sought permission from CBDT vide letter dated 20/05/2002, regarding extending the exemption under *Proviso(v) to Section 17(2)* of the Act, based on satisfaction of the assessee. Assessee has been following this practice since the year 1991. Further the exemption at no time exceeded Rs.15,000/-

6.3.25. Based on above discussions we note that assesse was under a bonafide belief that;

- Section 192(1) requires assessee to make payments to its employees on estimation;
- Non deduction of TDS is based on letter dated 20/05/2002 by CBDT;
- Incurring of actual expenditure by the employees was supported by self attested declaration from employees;

- Payments in question for which the assessee has been treated as, "assessee in default" for non deduction of tax at source were not in the nature of income within the meaning of Section 17(v) of the act, and therefore there was no obligation on the part of assessee to deduct tax at source.
- Though section 192(2D) was inserted by Finance Act 2015, Rule 26 does not specify requirement to deduct TDS in case of Cash Medical Benefit.

In this situation, the stand of the assessee that the Cash medical benefit were only reimbursement of the expenditure incurred by the employees, and as such they could not form part of their income, could not be said to be without any basis. Therefore, the belief of the assessee on that point was bona fide. Since the estimate made by the assessee has been held to be honest and bona fide, the assessee could not be treated as "assessee in default"

Therefore, the Ld.AO had no jurisdiction under section 201 to demand further tax from the assessee in respect of the short deduction made concerning Cash Medical Benefit for assessment year 2015-16 & 2016-17.

As regards charging of interest under section 201(1A), since relief, as mentioned above, had been allowed, the Ld.AO is directed to modify the quantum of interest taking into consideration the said relief for assessment year 2015-16 & 2016-17.

Accordingly, Ground No. 6.1-6.2, 6.4-6.7,6.9-6.10 and 5.1-5.2, 5.4-5.7, 5.9-5.10 relevant to appeals filed by each branch for assessment years 2015-16 & 2016-17 respectively stands allowed .

7. Issue IV: Payment made to Sodexo SVC (Grounds 7.1-7.4 for assessment year 2016-17)

Ld.Counsel submitted that, these grounds pertains Chitradurga and Davangere Branch.

At the outset we reiterate that this issue is also raised in Ground No.7.1.-7.2 for asst. year 2012-13 and Ground No.8.1-8.2. appeal filed in respect of assessment year 2014-15. We have already quashed and set aside the assessment order passed under section 201 of the Act by Ld.AO in para 6.3.12 hereinabove. As a, result the addition stands deleted for asst. year 2012-13 & 2014-15.

7.1 Ld.Counsel submitted that authorities below have erred in treating the assessee as, "assessee in default", by holding that the assessee deducted tax at a lower rate with respect to payment made to Sodexo SVC India Pvt.Ltd.

7.2. It has been submitted that authorities below have not looked into the evidences available on record like certificate furnished under section 197(1) of the Act. Ld.Counsel submitted that Ld.CIT(A) in the impugned order has not given any finding in respect of this issue. He thus submitted that the issue may be remanded to Ld.CIT(A).

8. We have perused the records placed before us.

8.1. For assessment year 2016-17, we note that evidence filed by the assessee has not been considered by authorities. The assessee is directed to furnish relevant details in support of the claim before the Ld.AO. We, therefore remand this issue to the Ld.AO to consider the ground in light of certificates furnished, in accordance with law. Needless to say the assessee may be granted proper opportunity of being heard in accordance with law.

Accordingly these grounds raised stands allowed for statistical purposes.

In the result, the appeals filed by the assessee stands allowed for assessment years 2011-12 to 2014-15 on the legal issue and the appeals for assessment years 2015-16 & 2016-17 stands partly allowed as indicated hereinabove.

Order pronounced in Open Court on 21st January 2021.

Sd/-	**Sd/-**
(B.R Baskaran)	**(Beena Pillai)**
Accountant Member	**Judicial Member**

Bangalore,
Dated, 21st January, 2021.
/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.