

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.28199 to 28211 of 2015
and
M.P.Nos.1 of 2015

W.P.No.28199 of 2015

Aruna C.Chowatia

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.
2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.
3. The Income Tax Officer,
Non Corporate Circle,
Ward 4(3),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28199 of 2015:-

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28200 of 2015

Ashok Kumar B.Chowatia

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.

2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.

3. The Income Tax Officer,
Non Corporate Circle,
Ward 4(1),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28200 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28201 of 2015

Babulal L.Shah

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.

2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.

3. The Income Tax Officer,
Non Corporate Circle,
Ward 5(1),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28201 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28202 of 2015

Chandenben

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.

2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.

3. The Income Tax Officer,
Non Corporate Circle,
Ward 4(3),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28202 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28203 of 2015

Madanlal B.Chowatia

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.
2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.
3. The Income Tax Officer,
Non Corporate Circle,
Ward 5(1),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28203 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28204 of 2015

Naina A.Chowatia

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.
2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.

3. The Income Tax Officer,
Non Corporate Circle,
Ward 5(2),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28204 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

W.P.No.28205 of 2015

Nirmala Bai

...Petitioner

-Versus-

1. The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.
2. Influence Enterprises (India) Pvt. Ltd.,
No.3, Blackers Road, 4th Floor,
Near Casino Theatre,
Anna Salai, Chennai 600 002.
3. The Income Tax Officer,
Non Corporate Circle,
Ward 5(2),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

...Respondents

Prayer in W.P.No.28205 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the 1st respondent to reflect the amount which has been deducted by the 2nd respondent while paying the rent and treat the 2nd respondent as the defaulter and recover the dues from them under the provisions of Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14.

For Petitioner(s) : Mr.T.V.Lakshmanan for
petitioner in all Writ
Petitions

For Respondent(s) : Mr.T.Pramodkumar Chopda
Senior Standing Counsel for
Respondents R1 & 3

COMMON ORDER

Seeking for mandamus directing the 1st respondent to reflect the TDS amount, which has been deducted by the 2nd respondent herein while paying rent, and to treat the 2nd respondent as the defaulter and also directing the 1st respondent to recover the dues from them under the provisions of the Income Tax Act, 1961 for the years 2011-12, 2012-13 and 2013-14, the respective petitioner have come forward with these writ petitions.

2. Heard both sides and also perused the records carefully.

3. The issue is related to deduction of TDS by the 2nd respondent. According to the petitioners, the 2nd respondent deducted TDS and though necessary details were furnished to the authority concerned by the petitioners, recovery proceedings are sought to initiated. Hence, the petitioners are now before this court for appropriate reliefs.

4. The learned counsel appearing for the petitioners has brought to the notice of this court an order passed by this court in Executors of the Estate of S.Shanmuga Mudaliar v. The Assistant Commissioner of Income tax and another, reported in CDJ 2014 MHC 4040 wherein this court has held as follows:-

"17. This has been dealt with by the Bombay High Court in the case of (Yashpal Sahni vs Rekha Hajarnavis, Asst. CIT (Bom.) reported in (2007) 293 ITR 539(Bom), wherein the Bombay High Court has held as follows:

"15. Chapter XVII of the Income Tax Act, 1961, provides for collection and recovery of tax by two modes. They are (one) directly from the assessee and (two)

indirectly by deduction of tax at source. In the present case, we are concerned with the second mode of recovery, namely, recovery of tax by deduction at source.

17. Sec.201 of the Act, inter alia, provides that where a company bound to deduct tax at source fails to deduct tax or after having deducted fails to pay the said tax to the credit of the Central Government within the stipulated time, then the Company shall be deemed to be an assessee in default in respect of the tax and the said company shall be liable to pay the simple interest at 12 per cent per annum on the TDS amount from the date on which such tax was deductible upto the date on which such tax is actually paid to the Central Government. Section 201(2) of the Act further provides that till the TDS amount with interest, as stated above, is paid to the Central Government, there shall be a charge upon all the assets of the company. Moreover, section 221 of the Act, inter alia, provides for the levy of penalty and section 276B of the Act, inter alia, provides that where a person fails to pay to the credit of the Central Government, the tax deducted at source, such person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and provides for levy of fine. Thus, the Act provides for complete machinery to recover the tax deducted at source from the person who has deducted it.

"18. At this stage, we may also note that every person deducting tax at source is required

to issue a certificate under section 203 of the Act specifying the amount of tax deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed. Section 199 of the Act provides that any tax deducted at source under the provisions of Chapter XVII and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made and the credit shall be given to him for the amount so deducted on the production of the TDS certificate issued under section 203 of the Act. Section 205 of the Act provides that where tax is deductible at the source under Chapter XVII of the Act, the assessee shall not be called upon to pay the tax himself to the extent to which the tax has been deducted.

Section 205 of the Act, as it stood at the relevant time, read thus:

205. Bar against direct demand on assessee. Where tax is deductible at the source under sections 192 to 194, section 194A, section 194B, section 194BB, section 194C, section 194D, section 194E, section 195 and section 196A, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income". 20. From the language of section 205, it is clear that once the tax is deducted at source, the same cannot be levied once again on the assessee who has suffered the deduction. Once it is established that the tax has been deducted from the salary of the employee, the bar under section 205 of the Act comes into operation and it is immaterial as to whether the tax deducted at source has been paid

to the Central Government or not, because elaborate provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax.

18. Following this judgement, a learned Single Judge of Karnataka High Court in the case of (Smt. Ansuya Alva vs Deputy Commissioner of Income Tax) reported in (2005) 278 ITR 206, interpreting sec. 205, has held as follows:

"9. I am of the view that this understanding and such interpretation of Section 205 of the Act is also in consonance with the general principles of law, particularly the principles of the Law of Principal and Agent. If we look at the scheme for the provision of deduction of tax at source, it becomes obvious that such person is acting on behalf of the Revenue, i.e., as an agent of the Revenue. In fact, the person is enabled statutorily to make deduction and remit the amount to the Central Government, though in the instant case, the person who has deducted the amount may be the tenant or lessee of the petitioner and there is such inter se relationship as between the two, insofar as the deduction of tax at source representing 20 per cent of the monthly rent payable as envisaged under Section 194-I of the Act is concerned, the deduction is under the statutory obligation and on behalf of the Revenue and because of the compulsion herein. It is not as if the petitioner could prevent such deduction. When the person like a tenant acts as a representative or agent of the Revenue for such deduction and if there is any violation on his/her part, the consequence should fall only on the

Revenue and that cannot be foisted on the assessee. It is no doubt true that the assessee if pays the tax in terms of the tax liability, i.e., under the assessment order and to the extent of the amount is not paid to the Government remains a liability on the assessee also and could look upto the tenant to recover the amount for reimbursement. The question in the light of the provisions is that, should the assessee be driven to that plight? I think that the provision is to provide a protection to the assessee and to prevent the Revenue from embarking on the recovery proceedings in respect of such amount. If such being the object of the provision, it is not possible to understand the word 'deduct' occurring in Section 205 as 'deducted and remitted'.

10. Even on the general principles of law, the Law of Principal and Agent, as discussed above, for a default of the agent of the Revenue, the petitioner-assessee, who is a third party in relation to such relationship cannot be penalised. In the circumstances, I am of the view that the Revenue is to be definitely restrained in terms of Section 205 of the Act from enforcing any demand on the assessee-petitioner insofar as the demand with reference to the amount of tax which had been deducted by the tenant of the assessee in the present case, and assuming that the tenant had not remitted the amount to the Central Government. The only course open to the Revenue is to recover the amount from the very person who has deducted and not from the petitioner."

19. The facts and circumstances of the above case is similar to the facts of the present case. Therefore, we have no hesitation to hold that the bar under Sec.205 of the Income Tax Act prevents the department from demanding the tax deducted at source from the assessee who has suffered a deduction. Further more, now the liability rests with the Official Liquidator. Therefore, the Department is at liberty to proceed against the company in liquidation in the hands of the Official liquidator by filing a claim for the amount in question."

5. There is no dispute that the 2nd respondent was a tenant under the petitioners herein. Now, the petitioners claim that the 2nd respondent vacated the premises long back. It is the specific case of the petitioners that though the 2nd respondent company effected TDS, it had failed to remit the same into the account of the Income Tax Department. This is a disputed fact which cannot be resolved in this writ petition without any material and in the absence of the 2nd respondent. Having regard to the fact that the deduction of TDS from the amount payable to the petitioners towards rent as well as remittance of the same were to be made by the 2nd respondent, this court deems it appropriate to direct the respondents 1 and 3 to consider the letter/representation of the petitioner in this regard after issuing necessary notice to the 2nd respondent and to conduct an enquiry and to pass appropriate orders on merits and in accordance with law. The said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

6. The writ petitions are disposed of with the above directions. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Joint Commissioner of Income Tax (TDS),
TDS Cell, Range-I,
121, M.G.Road, Nungambakkam,
Chennai 600 034.

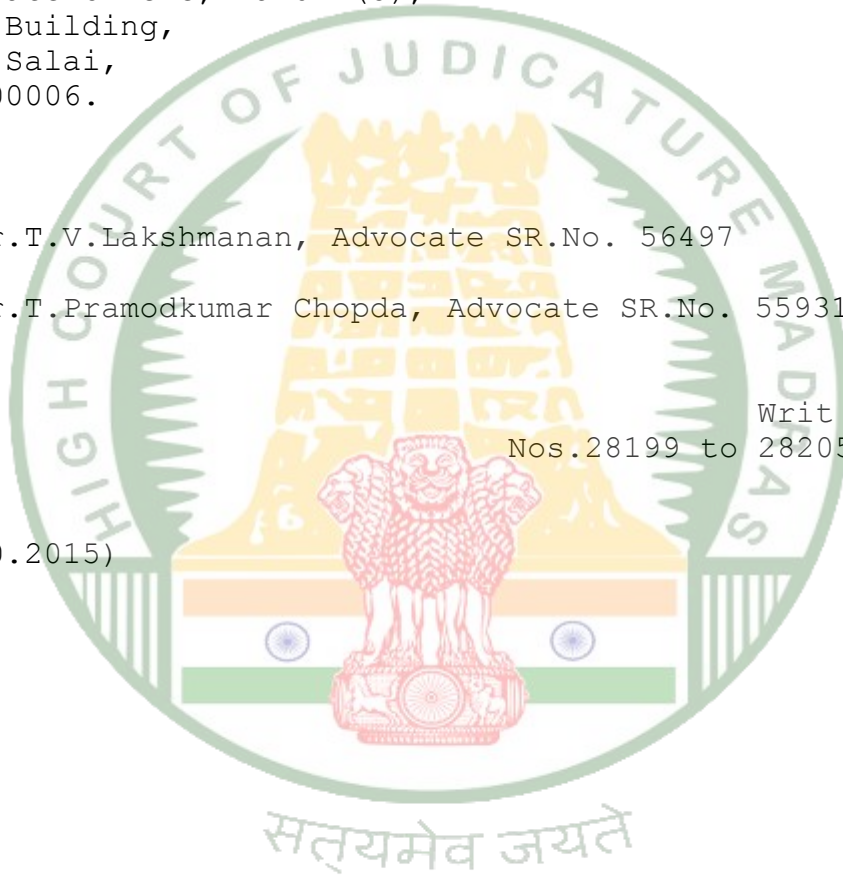
2.The Income Tax Officer,
Non Corporate Circle, Ward 4(3),
Kannammai Building,
611, Anna Salai,
Chennai 600006.

3 CC to Mr.T.V.Lakshmanan, Advocate SR.No. 56497

1 CC to Mr.T.Pramodkumar Chopda, Advocate SR.No. 55931

Writ Petition
Nos.28199 to 28205 of 2015

KM (CO)
PSI (28.10.2015)



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