IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19820 to 19826 of 2016 and
connected WMPs

| | | |
|---|---|---|
| Nirmala Bai | .. | Petitioner in W.P.No.19820 of 2016 |
| Naina A.Chowatia | .. | Petitioner in W.P.No.19821 of 2016 |
| Chandenben | .. | Petitioner in W.P.No.19822 of 2016 |
| Madanlal B.Chowatia | .. | Petitioner in W.P.No.19823 of 2016 |
| Aruna C.Chowatia | .. | Petitioner in W.P.No.19824 of 2016 |
| Ashok Kumar B.Chowatia | .. | Petitioner in W.P.No.19825 of 2016 |
| Babulal.L.Shah | .. | Petitioner in W.P.No.19826 of 2016 |

vs.

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

2.Lalitha Motors Pvt. Ltd.,
rep. by its Director
Mr.Kiran Kumar Jain,
Chennai.

3.Dilip Chhabria Designs Pvt. Ltd.,
rep. by its Director Mr.Kanchan Chaabria
Mumbai.

4.Income Tax Officer
Non Corporate Circle, Ward 5(2)
Kannammai Building
611, Anna Salai,
Chennai 600 006. .. Respondents in W.P.No.19820 to W.P.No.19826 of 2016

PRAYER in W.P.No.19820 to 19826 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus, to reflect the amount which has been deducted by the second respondent while paying rent and treat the second respondent as 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 Petitioners : Mr.T.V.Lakshmanan
(in all W.Ps)

For Respondent : Mr.S.Rajesh
(in all W.Ps) for Mr.J.Narayanaswamy-R1 & R4

Mrs.S.P.Meenakshi Sundaram - R2
No appearance - R3

COMMON ORDER

Heard Mr.T.V.Lakshmanan, learned counsel appearing for the petitioners, Mr.S.Rajesh, learned counsel for Mr.J.Narayanasamy, learned counsel for the first and fourth respondent and Mr.S.P.Meenakshi Sundaram, learned counsel for the second respondent. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2.In all these Writ Petitions, the petitioners seek for a direction upon the first respondent to reflect the amount which have been deducted by the second respondent while paying the rent and treat the second respondent as a defaulter and recover the dues from them under the provisions of the Income Tax Act, 1961, for the relevant assessment years.

3.The specific case of the petitioners is that the tax on rent which was deducted by the second respondent, has not been remitted to the Government's Account, as it does not reflect in the official website pertaining to the petitioners assessments.

4.The matter was adjourned by this Court on five earlier occasions, so that the first respondent can file counter affidavits. At last, today, when the matter is heard, counter affidavits have been filed by the first respondent sworn to by M.Murali Mohan, Joint Commissioner of Income-Tax, TDS Range-1,Chennai.



5.In the counter affidavits, the paragraphs which would be relevant for the purpose of deciding the case, is paragraph Nos. 6 and 10. However, on a reading of paragraph No.6, this Court finds that the averments made in the counter affidavits are absolutely vague. It says that the Assistant Commissioner of Income Tax, TDS Circle-2 conducted inspection on the second respondent with regard to Tax Deducted at Source, on 04.08.2016. Whether the inspection was an informal inspection or preceded by issuance of a statutory notice, is not clear and the full particulars which were gathered by the said Assistant Commissioner of Income Tax have also not been disclosed in the counter affidavits. All that has been stated is, consequent to the inspection, it revealed that the second respondent has deposited Rs.10,00,000/- [Rupees Ten lakhs only], on 09.08.2016 as Tax deducted at source. The counter affidavits do not state on what date the deduction was effected, whether the second respondent had remitted the same to the Government's Account within the time as stipulated under the Act, etc. Further, in paragraph 6 of the counters, it has been stated as follows:

> "6.... It is submitted that the petitioners had earlier deposited TDS of Rs.3,96,900/- on 28.09.2012 towards tax deducted on rent paid to the petitioners."

6.The counter affidavits have been sworn to by the first respondent, without even noticing the mistake in his submissions i.e., the word 'petitioners' should be read as 'second respondent' and the remittance of TDS is said to have been made on 28.09.2012. Conveniently, the date on which the tax was deducted and the date within which it has to be remitted to the Government's Account have not been disclosed. Ultimately, a vague submission has been made in paragraph No.10. Therefore, the counter affidavits filed by the first respondent stand rejected.

7.In the light of the above fact, thorough enquiry into the matter is required to be done and the manner in which the Assistant Commissioner has proceeded with the matter, that too, after the Writ Petitions were filed, notices were ordered and the cases were adjourned from time to time, do not inspire confidence in the mind of the Court, that proper procedure has been followed.



8.For the foregoing reasons, there will be a direction to the first respondent to issue notice to the petitioners and to the respondents 2 to 4 to produce all the records, make a thorough verification and pass appropriate orders strictly in accordance with law, as per the provisions of the Income Tax Act, 1961. The above direction shall be complied with by the first respondent, within a period of three weeks from the date of receipt of a copy of this order, making it clear that the petitioners and the respondents 2 & 3 shall extend their full co-operation in the enquiry to be conducted.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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4.Income Tax Officer
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611, Anna Salai, Chennai 600 006.

+1cc to Mr.S.P.Meenakshi Sundaram, Advocate Sr.57252
+1cc to Mr.J.Narayanaswamy, Advocate SR.57302
+1cc to Mr.S.Rajesh, Advocate SR.57025

W.P.Nos. 19820 to 19826 of 2016



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srg 10/11/2016