

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 01.04.2021

DELIVERED ON: 16.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos. 31167, 31170, 31172 and 31174 of 2018
and

W.M.P.Nos.36375, 36376, 36372, 36373, 36379 and 36380 of 2018

- 1.Ashok Kumar B. Chowatia, Petitioner
(In W.P. No.31167 of 2018)
- 2.Madanlal B.Chowatia Petitioner
(In W.P. No.31170 of 2018)
- 3.Chandenben Petitioner
(In W.P. No.31172 of 2018)
- 4.Aruna C. Chowatia Petitioner
(In W.P. No.31174 of 2018)

Vs.

- 1.The Joint Commissioner of Income Tax (TDS)
TDS Cell, Range -I,
121, M.G. Road, Nungambakkam,
Chennai - 600 034.
 - 2.The Influence Enterprises (India) Pvt. Ltd.
No.4, Blackers Road, 4th Floor,
Near Casino Theatre, Anna Salai,
Chennai - 600 002.
 - 3.The Deputy Commissioner of Income Tax,
Non-Corp Cir 9(i//c) Chennai, 211, Wanaparthi Block
II Floor, 121, M.G. Road, Nungambakkam,
Chennai - 600 034.
 4. Income Tax Officer,
Office of the ITO, TDS Ward-2(2),
Ist Floor, Room No.109, BSNL Building,
Tower 1, No.16, Greaves Road,
Chennai - 600 006.
- ... Respondents

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for to calling for the records on files of the 3rd respondent in his proceedings in File Nos.(i) DCIT NCC-9/2016-17 dated 03.08.2017 (ii) C.No.CHE108C1/106/AADPC68591 dated 25.01.2018, (iii) DCIT NCC-9/2016-17 dated 03.08.2017 (iv) C.No.CHE108C1/107/AADPC6861

dated 25.01.2018 and quash the same 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 due from them under the provision of Income Tax Act, 1961 for the years 2011-12, 2012-13, and 2013-14.

For Petitioner : Mr. T.V. Lakshmanan in all cases

For Respondents: Mr. Karthik Ranganathan

Standing Counsel for R 1, 3 and R4
in all cases

R2 : No appearance in all cases

C O M M O N O R D E R

By this common order all the four writ petitions are being disposed. The respective petitioners have challenged the respective impugned demand notices which called upon them to clear the arrears of tax purportedly due from them.

2. These demand notices are challenged by the respective petitioners on the ground that the tax that has been demanded as arrears of tax from the petitioners Tax Deducted at Source by the second respondent but was not paid the credit of the Central Government and therefore the petitioners cannot be fastened with the tax liability as the second respondent is an assessee in default within the meaning of Section 201 of the Income Tax Act, 1961.

3. It is further submitted that earlier W.P.Nos. 28199-205 of 2015 were filed before this court where the petitioners along with others had faced demands from the respondent Income Tax Department.

4. It is submitted that this court after considering the grievance of the petitioners therein which included writ petitioners herein passed the following orders:-

"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."

5. It is submitted that an enquiry was conducted pursuant to which three separate orders dated 16.01.2018 for the financial years 2010-11, 2011-12, & 2012-13 were passed by the 4th respondent against the 2nd respondent wherein the undertaking of the second respondent was also recorded.

6. It is submitted that it is not open for the respondents namely the 3rd respondent/Deputy Commissioner of Income Tax, to issue demand notice to the petitioner to demand tax vide impugned demand notice dated 03.08.2017, 02.11.2017 & 25.01.2018 in respect of these Assessment Years.

7. It is submitted that pursuant to the aforesaid order of this Court on 13.10.2015, the Income Tax Officer (TDS Ward 2), Chennai has also passed consequential orders by holding that the 2nd respondent was tenant and an assessee in default and therefore liable to pay the deducted amounts for the Assessment Years 2010-2011, 2011-2012, 2012-2013 dated 16.01.2018.

8. Hence, full tax having been deducted by the 2nd respondent, the 2nd respondent alone was liable to tax. The 2nd respondent did not fully cooperate in the enquiry before 4th respondent as is recorded in the above mentioned order.

9. It is further submitted that since for other years TDS has been deposited with the department, the issue is outstanding only for the financial year 2010-11 where also the liability is partially admitted by the 2nd respondent. However, the department in its counter has taken a stand that TDS was not deposited with the department hence petitioners would also be liable to pay tax.

10.It is submitted that this stand is against the object and purpose of Sec 205 of Income Tax Act, 1961. Further, based on clause 4(c) of the MOU dated 30.7.2014, signed between the petitioner and the 2nd respondent, the contention of the department that there was no actual deduction is contrary to the finding of the 4th respondent in orders dated 16.01.2018, which was based on an undertaking as adverted to in the order at Pg No.77 of typed set of papers.

11.It is further submitted, as per section 194-I of the Income Tax Act, 1961, TDS of rents does not contemplate payment of rent by cash alone. Hence, adjustment is also permitted as actual payment of cash is not the only mode. Therefore, going by the finding of the 4th respondent and the undertaking the TDS was in fact deducted. Thus, the 3rd respondent should have applied Section 205 and not proceeded against the petitioners.

12.It is submitted that corresponding corrections have not been carried out in website, which continues to show the mismatch. Further, petitioners have also been issued with the impugned demand notices arbitrarily and unreasonably.

13.It is further contention of the petitioner in these writ petitions that the second respondent having Deducted Tax at Source from and out of payments made to the petitioners, the petitioners cannot be saddled with tax liability as it was the duty of the Income Tax Department to recover such Tax Deducted at Source (TDS) from the second respondent.

14.Defending the impugned demand proceedings, the learned standing counsel for the Income Tax Department submits that the second respondent has made certain payments during the pendency of the writ petition and therefore the petitioners were liable to pay the balance.

15. Defending the impugned order, the learned senior standing counsel for the Income Tax Department submits that the tax deduction at source by the 2nd respondent for the Assessment Years 2011-2012 & 2012-2013 has been remitted by the 2nd respondent and therefore, the balance period the amount has to be paid by the petitioners.

16. It is further submitted that there was a dispute between the respective petitioners who are the owners/landlords of the property with the 2nd respondent/tenant which was rented out to the 2nd respondent/tenant and that Memorandum of understanding was signed between them on 30.07.2014 as per which the respective petitioners have secured their interest

by asking the 2nd respondent to deposit the amount deducted towards tax. In case such amount is not paid, the 2nd respondent had given cheque to cover the same.

17. It is submitted that no amount was deducted as no amounts were paid and therefore question of invoking Section 205 of the Income Tax Act, 1961 did not arise at all. He further submits that under Section 191 of the IT Act, in case of income in respect of which provision is not made under the provisions of the IT Act for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of the income-tax shall be payable by the assessee directly.

18. That apart, it is submitted in the counter filed by the first and the third respondent that under section 194 I of the Income Tax Act, 1961 while making payment of rental income into recipients account, such person is required to deduct tax at source at the rates prescribed by the Central Government and remit the same to the credit of the Central Government by the seventh of the succeeding month as per Rule 30 (2) of the Income Tax Rules.

19. It is further submitted that, it is the duty of the person deducting tax under section 203 of the Income Tax Act, 1961 to furnish certificate for Tax Deducted at Source to the person to whose account credit has been given and that as per section 200 (3) the person deducting tax has to prepare statement for such period giving the details of the Tax Deducted at Source and remitted in the prescribed form and if such a person fails to remit the same to the credit of the Central Government, then he would be treated as a defaulter under section 201 (1) of the Income Tax Act, 1961.

20. It is submitted that assessments were completed under section 143 and were modified under section 154 of the Income Tax Act, 1961 and if the petitioners were so aggrieved by any wrong adjustments made in the Assessment Orders as rectified under section 154 of the Income Tax Act, 1961, it was open for the petitioners to file an appeal before the Commissioner of Income Tax (Appeals). It is therefore submitted that the writ petitions were without any merits and were liable to be dismissed cost.

21. I have considered the arguments advanced by the learned counsel for the petitioners in the respective writ petitions and the learned counsel for the respondent Income Tax Department.

22.The second respondent was a tenant of the petitioners and few others who belong to the same family. The 2nd respondent had committed default in making payments to the petitioners. Though copy of the lease agreement signed between the parties is not available for perusal, a copy of the Memorandum of Understanding dated 30.7.2014 signed on behalf of the petitioners and other owners with the second respondent company has been filed.

23.As per the said Memorandum of Understanding, the second respondent was in arrears of lease rental to the petitioners and that as on the date of the said Memorandum of Understanding on 30.07.2014, the second respondent was in arrears of Rs. 64,96, 650/- to the Land-lords. Against the aforesaid arrears, the petitioners along with other owners adjusted the interests free deposit of Rs.34,53,640/- leaving a balance of Rs.30,43,010/-to be paid to the petitioners by the 2nd respondent on or before 31.8.2014. Rs. 30,43,010/- which included the rent payable up to the said date. To that effect, the second respondent is supposed to have given a post-dated cheques drawn on Axis Bank, Anna Salai, Chennai.

24.That apart in Para 4(a) of the said Memorandum of Understanding, it is recorded that the second respondent had not remitted Tax Deducted at Source on the payments made earlier to the petitioners and others for an amount of Rs.33,16,192/- as per annexure II to the said Memorandum of Understanding.

25. Annexure II of the said Memorandum of Understanding details, the Tax Deducted at Source by the second respondent for the Financial years 2010-11 (Assessment year 2011-12), Financial year 2011-12 (Assessment years 2012-13), Financial year 2012-13 (Assessment year 2013-14), Financial year 2013-14 (Assessment year 2014-15) and Financial year 2014-15 (Assessment year 2015-16) but not paid to the credit of the Income Tax Department.

26. That apart in Para 4(c) of the said Memorandum of Understanding also records that during the Financial year 2011-15, the second respondent had not paid Tax Deducted at Source to the credit of the Income Tax Department for a sum of Rs.14,21,617/- and that the second respondent undertook to pay the same together with interest thereon to the Department on or before 31.8.2014 and that Certificate in Form 16-A would also be issued to the petitioners and others who were the owners of the property.

27. To secure the interest of the petitioners, the second respondent also enclosed in cheque for the aforesaid amount drawn on the same bank and if the amount was not paid to the credit of the Income Tax Department by the the aforesaid cheque also would be presented for being encashen.

28. The aforesaid Memorandum of Understanding also refers to another Memorandum of Understanding dated 11.5.2010 wherein it is acknowledged by the second respondent the second respondent and failed to remit Tax Deducted at Source for an amount of Rs. 18,94,875/- and that the aforesaid amount had not been paid by the second respondent and that the second respondent would pay the same to the credit of the Income Tax Department by 30.9.2014 and to secure the payment to the credit of the Income Tax Department, the second respondent had also issued a post-dated -cheque for the aforesaid amount in favour of the petitioners which was to be presented, as the second respondent failed to make such payments to the credit of the Income Tax Department within such time.

29. There is some confusion in the amount that was to be deducted and actually deducted by the second respondent. In Annexure II to the Memorandum of Understanding Dated 30.7.2014, for the Financial Year 2010-11 [corresponding Assessment Year 2011-12] total tax to be deducted has been shown as Rs. 3,34,202.50/- for each of the petitioners whereas the tax that was credited to the account of the Income Tax Department has been shown as only Rs. 55,457/-.

30. Details of the tax that was remitted the credit of the Central Government as per the aforesaid Memorandum of Understanding is as under:-

Financial Year	Assessment Years	W.P.No.31167 of 2018*	W.P.No.31170 of 2018*	W.P.No.31172 of 2018	W.P.No.31174 of 2018
2010-11	2011-12	3,34,202.50	3,34,202.50	3,34,202.50	33402.00
2011-12	2012-13	73,107.00*	73,107.00	3,34,202.50	33402.00
2012-13	2013-14	73,107.00*	73,107.00	3,34,202.50	33402.00
2013-14	2014-15	73,107.00*	73,107.00	3,34,202.50	33402.00
2014-15	2015-16	30,461.50	30,461.50	30,461.50	30,461.50
Total		5,83,984.00	5,83,984.00	5,83,984.00	5,83,984.00

Whereas, the respective demand notices quantify the amounts due from the petitioners as follows:-

Assessment Years	W.P.No.31167 of 2018	W.P.No.31170 of 2018	W.P.No.31172 of 2018	W.P.No.31174 of 2018
2009-10	86,250.50			
2010-11	20,510.00			
2011-12	8,11,749.00			
2012-13	1,46,730.00	7,93,740.00	8,61,010.00	4,11,570.50
2013-14	1,20,630.00			5,66,400.00
2014-15	---		65,420.00	
2015-16	39,340.00			
2016-17	6,050.00			

31.The counters filed by the first and the third respondent also do not give the exact amount of tax that was allegedly due from the petitioners which ought to have been paid by the petitioners as per the assessments completed for the respective petitioners under section 143 of the Income Tax Act, 1961 as modified by orders passed under section 154 of the Income Tax Act, 1961.

32.Further, during the intervening period, orders have been passed under section 201(i) and 201(IA) of the Income Tax Act, 1961 against the second respondent by three separate orders dated 16.01.2018 for the assessment years 2011-12, 2012-13 and 2013-14 as mentioned above. These have to be factored while demanding arrears of tax to the petitioners.

33.To the extent tax was deducted by the second respondent and not remitted by the second respondent to the Income Tax Department, recovery can be only directed against the second respondent as the second respondent is the assessee in default. The petitioner cannot be made to pay tax twice. Recovery of any of such Tax Deducted at Source but not remitted by the second respondent has to be recovered only from the second respondent.

34.Therefore, I am inclined to quash the respective demand notices and direct the third respondent to issue fresh demand notices to the petitioners after taking note of the subsequent developments and payments made by the 2nd respondent. It is made clear that to the extent Tax was Deducted by the second respondent but not remitted, no demand shall be made against the petitioners. If the second respondent had failed to remit the tax to the credit of the Income Tax Department, it is however open to the department to recover the same from the 2nd respondent in the manner known to Law. Balance of tax if any, which has escaped payment alone can be recovered from the Petitioners, by issuing suitable notice under the provisions of the Income Tax Act, 1961. Such notice may be issued within a period of four weeks from the date of receipt of copy of this order.

35. This Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected writ petitions are closed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

lbm

To

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

2.The Deputy Commissioner of Income Tax,
Non-Corp Cir 9(i//c) Chennai, 211, Wanaparthy
Block II Floor, 121, M.G. Road, Nungambakkam,
Chennai - 600 034.

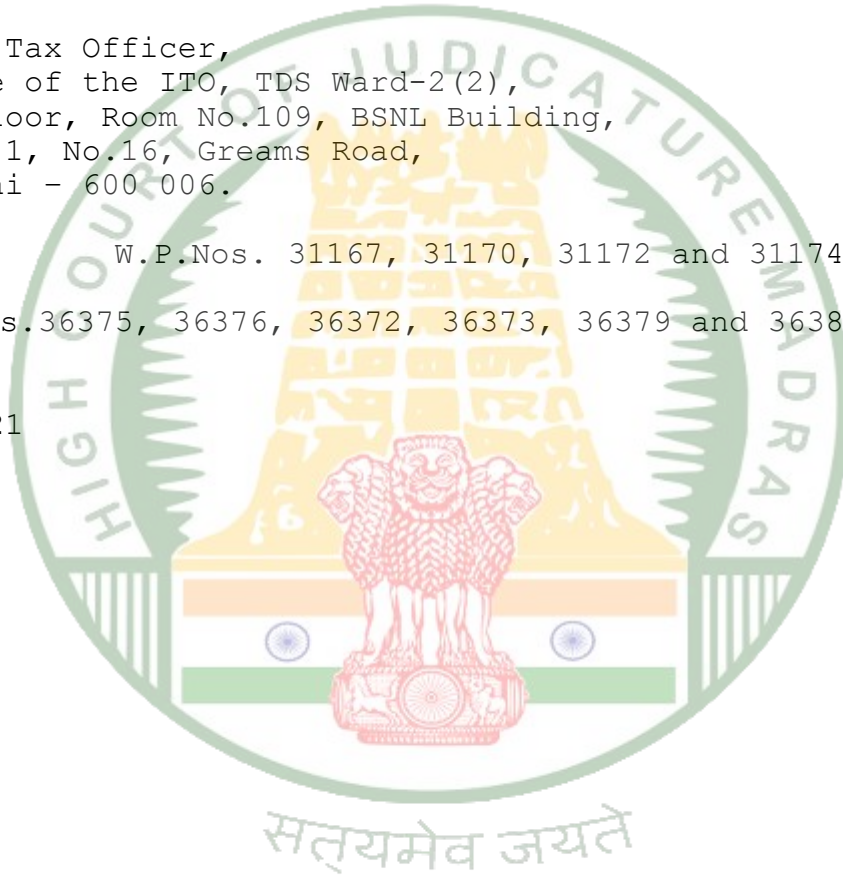
3. Income Tax Officer,
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