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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2442 OF 2024

Aslam Checkar ...Petitioner
Versus
Income Tax Officer AO No 1 Range
Code 70 Circle 1 & Ors. ...Respondents

AND
WRIT PETITION (L) NO. 2255 OF 2024

Shradda M. Ghanshramani ...Petitioner
Versus
Income Tax Officer AO No 1 Range
Code 433 AO No.93 Ward 42 3 3 & Ors. ...Respondents

AND
WRIT PETITION (L) NO. 2334 OF 2024

Renuka Lilian Theresa DME LLO ...Petitioner
Versus
Income Tax Officer AO No 1 Range
Code 197 Circle 2 2 1 & Ors. ...Respondents

AND
WRIT PETITION (L) NO. 2444 OF 2024

Atish Mahadeo Shelar ...Petitioner
Versus
Income Tax Officer Ward 2 0 1 1
Rane Code 174 ao No.1 & Ors. ...Respondents

AND
WRIT PETITION (L) NO. 13517 OF 2024

Nikita Joshi ...Petitioner
Versus
Income Tax Officer AO No.94 Range Code 432
Ward 42(2)(4)& Ors. ...Respondents

Ms. Manini Bharati with Mr. Suyash More i/b. Rahul Soman, for the Petitioners.
Ms. Samiksha Kanani, for Respondents in WPL 2442/24.
Ms. Mamta Omle, for Respondents in WPL 2444/24.
Mr. Ravi Rattesar, for Respondents in WPL 13517/24.

CORAM: **G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.**

DATE **10 SEPTEMBER 2024**

P.C.

1. These are batch of petitions wherein the petitioners have prayed for similar substantive reliefs namely praying that the impugned demand issued to the petitioners by respondent No.1, which is stated to be on account of non-deposit of the TDS amounts by respondent No.2 (petitioners' employer) be quashed and set aside. For convenience, we note the prayers as made in the first petition [Writ Petition (L) No.2442 of 2024; Aslam Checkar Vs. Income Tax Officer & Ors.] which read thus:-

> a) Issue a writ of certiorari thereby calling for the record of proceedings culminating into issuance of the Impugned Demand dated 12 January 2021 (Exhibit C to the Petition) after examining the legality, validity and propriety thereof, the Impugned Demands be quashed and set aside;

2. The case of the petitioners is that they were employees of respondent No.2 for the period which is set out in each of the petition. They were being paid monthly emoluments / salary, after deduction of TDS (taxes at source) by respondent No.2, as clearly seen from the pay slips issued to the petitioners by respondent No.2, for the respective period (A.Y.) as set out in each of these notices. It is the case of the petitioners that since the year 2019, respondent No.2 was involved in criminal proceedings initiated against it by the Enforcement Directorate (ED), in regard to the financial crimes. It is stated that also there was an investigation undertaken by SEBI on investors grievances in relation to violation of the securities law. It is stated that during the course of such investigation, the directors of respondent No.2 as also some senior officers of respondent No.2 were arrested. It is stated that as a consequence of these irregularities, there were defaults on the part of respondent No.2 in the payment of petitioners' salary. Some of the employees did not at all receive their salaries while some others received delayed payments. It is stated that some of the petitioners have not received salary from the month of April 2020 till filing of the petitions in January, 2024. It is further stated that there are also other defaults of respondent No.2 in statutory payments like provident fund etc. In such circumstances, the petitioners concerned with their survival were constrained to leave respondent No.2's employment. At such point of time,

there were substantial dues payable to the petitioners including salary for the period prior to petitioners' leaving the services of respondent No.2.

3. It is the petitioners' case that on such backdrop the petitioners were shocked to receive from respondent No.1 the impugned notices demanding payment of income tax alongwith interest, on account of non-deposit of TDS amount by respondent No.2, which according to the petitioners, were shown to have been deducted from the salary slips as issued to the petitioners. The petitioners contend that it was not permissible for respondent No.1 to issue such demand notices against the petitioners in view of clear provisions of Section 205 of the Income Tax Act, which bars any demand against the assessees. The provision ordains that where tax is deductible at source under the provisions of Chapter XVII, the assessee shall not be called upon to pay tax himself to the extent to which the tax has been deducted from the income. In this view of the matter, learned Counsel for the petitioners submits that no demand could have been foisted by respondent No.1 on the petitioners. To this effect, the petitioners have also made representations on the portal of the department that the demand may be withdrawn. However, the same has not been acted upon and the demand is stated to have subsisted.

4. Learned Counsel for the petitioners has submitted that the impugned action would also be contrary to the office memorandum dated 11 March 2016

issued by the Central Board of Direct Taxes wherein the income tax authorities have been informed of the clear provision of Section 205 and directions in that regard are issued vide letter dated 1 June 2015. The contents of the office memorandum read thus:

F.No. 275/29/2014-IT (B)
Government of India
Ministry of Finance
Central Board of Direct Taxes
(CBDT)

New Delhi, Dated: 11th March 2016

Office Memorandum

Sub: Non-deposit of tax deducted at source by the deductor-Recovery of demand against the deductee assessee.

Vide letter of even number dated 01.06.2015, the Board had issued directions to the field officers that in case of an assessee whose tax has been deducted at source but not deposited to the Government's account by the deductor, the deductee assessee shall not be called upon to pay the demand to the extent tax has been deducted from his income. It was further specified that section 205 of the Income-tax Act, 1961 puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced coercively.

2. However, instances have come to the notice of the Board that these directions are not being strictly followed by the field officers.

3. In view of the above, the Board hereby reiterates the instructions contained in its letter dated 01.06.2015 and directs the assessing officers not to enforce demands created on account of mismatch of credit due to non-payment of TDS amount to the credit of the Government by the deductor. These instructions may be brought to the notice of all assessing officers in your Region for compliance.

This issues with the approval of Member (Revenue &TPS).

(Sandeep Singh)
Under Secretary (Budget)
Ph: 2309 4182

Email: Sandeep.singh68@nic.in

All Principal Chief Commissioners/ Principal Directors General of Income Tax.
All Chief Commissioners/ Directors General of Income Tax."

5. Learned Counsel for the petitioners submits that in the past, some of the employees of respondent No.2 in similar circumstances were required to approach this Court in the case "**Sachin S. Ghadge Vs. Income Tax Officer, Circle 22(1) & Ors.**"(Writ Petition No.1332 of 2023 & batch of petitions) which came to be decided vide order dated 17 July 2023 passed by the co-ordinate Bench of this Court wherein the Court recorded a statement as made on behalf of the Revenue that the petitioners be directed to furnish evidence to the Income Tax Officer who has issued notice of demand, that tax has been deducted at source from their salaries, and if such evidence is furnished the Income Tax Officer would not take any coercive steps against those petitioners. Accepting such statement made on behalf of the Revenue, those petitions were disposed of. In this view of the matter, learned Counsel for the petitioners submits that the petitioners would be entitled to the reliefs as prayed for.

6. Responding to the contentions as urged on behalf of the petitioners, learned Counsel for the Revenue submits that the provisions of Section 205 are very clear and if the case of the petitioners is accepted, certainly petitioners are required to submit all materials before the Assessing Officer and which may be taken into consideration and appropriate orders can be passed in that regard as

directed by this Court in *Sachin S. Ghadge*'s case. Learned Counsel for the petitioners has also submitted that the Court considering the additional prayer as made bay the petitioner that is prayer clause (b), let credit be granted to the petitioners in respect of the amount of tax deducted at source from the petitioner's salary for the Assessment Year in question as well as interest / penalty levied thereon.

7. Having heard learned Counsel for the parties and having perused the record as also the provisions of Section 205 of the Income Tax Act, we find that the mandate of Section 205 is absolutely clear that the assessee shall not be called upon to pay taxes himself to the extent to which tax has been deducted from the asessee's income. The object and purpose behind the provision is to the effect that when an obligation to deposit the tax as in the present case, is on the employer and if the employer has defaulted, the liability to pay such tax cannot be shifted so as to be foisted on the employee, who is in fact the beneficiary of the payment to be received from the employer and who would also become the beneficiary of the tax being deposited at source on his behalf. Such is the object of the provision. However, what the department has done is that without a warrant in law, the liability to pay such tax is being foisted on the petitioners, which is clearly in the teeth of Section 205 of the Income Tax Act. Thus, looked from any angle, it was not permissible for respondent No.2 to raise any such demand against the petitioners.

8. In this view of the matter, we are inclined to allow this petition in terms of the following order:-

ORDER

(I) The impugned demand notices issued to the petitioners stand quashed and set aside being in breach of Section 205 of the Income Tax Act,1961.

(II) It is clarified that if there is any other tax demand from the petitioners on any other count, all issues on the same are expressly kept open, as we have not adjudicated the other issues except the demand notice in relation to the TDS amounts not deposited by the petitioners' employers.

(III) Insofar as the petitioner' prayers in regard to credit of the amount to be granted is concerned, the petitioners are free to take appropriate steps as may be permissible in law and/or in the course of the assessment proceedings. All contentions in that regard are expressly kept open.

9. The petitions are partly allowed in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) **(G. S. KULKARNI , J.)**