IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.28215 & 28246 of 2024 and
W.M.P.Nos.30768 & 30791 of 2024

Harsha Sunil Shah ... Petitioner in W.P. No.28215 of 2024

Sunil Navin Chandra Shah ... Petitioner in W.P. No.28246 of 2024

Vs.

Assistant Commissioner of Income Tax,
Centralised Processing Cell-TDS,
TDS CPC, Aayakar Bhavan,
Sector -3, Vaishali,
Ghaziabad, Uttarpradesh – 201 010. ...Respondent in both cases

Prayer in both cases: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in DIN:TDS/2024/AL09005426/D/10000162843 and DIN:TDS/2024/AL09003912/D/100001624886 and quash the order dated 11.08.2024 passed therein.

For Petitioner in both cases	:	Ms.G.Vardina Karthik for Ms.Hema Muralikrishnan
For Respondent in both cases	:	Dr.B.Ramaswamy, Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed to call for the records of the respondent in DIN:TDS/2024/AL09005426/D/ 10000162843 and DIN:TDS/2024/AL09003912/D/100001624886 dated 11.08.2024 and quash the same.

2.The case of the petitioners is that they have purchased a residential flat bearing Flat No.278, Dev Darshan Apartment, Barnaby Road, Kilpauk, Chennai-600 018 from one Kanyalal T Gohil under a Sale Deed dated 05.08.2024, registered as document No.4173 in the office of the SRO., Purasaiwalkam and at the time of transfer of property by registration of the Sale Deed, tax was deducted at source @ 1% of the consideration paid to the vendor as required under Section 194IA of the Income Tax Act, 1961 and that the vendor has also produced a copy of his PAN card before the Sub Registrar. While so, the respondent has passed the impugned order alleging that there has been a short deduction of TDS by the petitioners to the extent of Rs.10,64,000/- and Rs.10,640/- towards interest. When the petitioners made enquiry with their vendor, the vendor informed that he had linked his PAN with his Aadhaar on 02.08.2024 by paying a late fee of Rs.1,000/-. Since the vendor has also provided the challan receipt with the petitioners for the late payment made by him for delay in linking PAN with Aadhaar, the question of vendor's PAN number being invalid does not arise. As the issuance of the above impugned order is erroneous in law, the petitioners are before this Court seeking the above prayer.

3.The learned counsel appearing for the petitioners submitted that as per Rule 30(2A) of the Income Tax Rules 1961, sums deducted as TDS under Section 194-IA of the Income Tax Act 1961 shall be paid to the credit of the Central Government within a period of 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB. The learned counsel appearing for the petitioners further submitted that even the justification report downloaded from the website does not give any reason or justification for the demand made by the respondent for a higher TDS from the petitioners and that the respondent ought to have seen that even as per the justification report, the rate at which tax is deductible at source is '1.000' only and therefore, the demand for Rs.11,20,000/- as deductible TDS is absolutely wrong and baseless. Therefore, the learned counsel for the petitioners prays for quashing the impugned orders and allowing these writ petitions.

4.Per contra, the learned Senior Standing Counsel for the respondent would submit that the justification report clearly shows that the TDS rate applicable was 20% as the vendor's PAN was deemed invalid due to the non-linkage with Aadhaar and when the report contained all relevant details, it was incumbent upon the petitioners to seek clarification if there was any confusion. He would further submit that the petitioners' claim regarding '1.000' TDS rate is misplaced and while Section 194-IA mandates 1% TDS rate for property transactions, Section 206AA overrides the said rate when the vendor's PAN is invalid or not linked to Aadhaar. Therefore, the demand for Rs.11,20,000/- as TDS is based on 20% deduction, which is legally enforceable under Section 206AA. Hence, he prays for dismissal of these petitions.

5.Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent and perused the documents available on records.

6.It could be seen from the records that the petitioners have purchased a residential flat at Chennai from one Kanyalal T Gohil under a Sale Deed dated 05.08.2024, registered as document No.4173 in the office of the SRO., Purasaiwalkam. At the time of transfer of property by registration of the Sale Deed, tax was deducted at source @ 1% of the consideration paid to the vendor as required under Section 194IA of the Income Tax Act, 1961 and that the vendor has also produced a copy of his PAN card before the Sub Registrar. As the respondent has passed the impugned orders alleging that there has been a short deduction of TDS by the petitioners to the extent of Rs.10,64,000/- and Rs.10,640/- towards interest, the petitioners are before this Court challenging the said impugned orders.

7.It is also seen from records that the vendor had linked his PAN with his Aadhaar on 02.08.2024 by paying a late fee of Rs.1,000/- and he has also provided the challan receipt with the petitioners for the late payment made by him for delay in linking PAN with Aadhaar. Therefore, the question of vendor's PAN number being invalid does not arise.

8.Since Section 206AA(1) stipulates that if any person who is entitled to receive any sum on which tax is deductible at source under the Act, fails to furnish his PAN number to the deductor, then the deductor shall deduct tax at source (TDS) at the rate of 20% and as per Section 206AA(6), if the PAN number provided by the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor and the provisions of sub-section (1) of Section 206AA will apply, the question of Section 206AA being applicable to the petitioners does not arise in as much as the petitioners remitted the sum of Rs.56,000/- against their vendor's PAN number on 09.08.2024 and the petitioners filed the Form 26QB on 09.08.2024 mentioning their vendor's PAN number and that the Department's website has also accepted the same and did not give any indication that the PAN number of the petitioner's vendor was invalid.

9.For the foregoing reasons, this Court is of the view that the impugned orders passed by the respondent are contrary to the facts and circumstances of the cases and violative of the principles of natural justice and the same are liable to be quashed. Accordingly, the impugned orders passed by the respondent are quashed and these writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

19.10.2024

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Index	: Yes/ No
Speaking Order	: Yes/ No
NCC	: Yes/ No

To

Assistant Commissioner of Income Tax,
Centralised Processing Cell-TDS,
TDS CPC, Aayakar Bhavan,
Sector -3, Vaishali,
Ghaziabad, Uttarpradesh – 201 010.

KRISHNAN RAMASAMY,J.

vga

W.P.Nos.28215 & 28246 of 2024 and
W.M.P.Nos.30766, 30768, 30790 & 30791 of 2024

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