$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7070/2024 & CM APPL. 29468/2024 (Interim Relief)

DINESH PANWAR .....Petitioner

Through: Mr. Rohan Chaudhary, Mr. Rahul Singh and Mr. Rajiv Verma, Advs.

versus

UNION OF INDIA (THROUGH) COMMISSIONER OF INCOME TAX TDS-2 .....Respondent

Through: Mr. Puneet Rai, SSC along with Mr. Ashvini Kumar, Mr. Rishabh Nangia and Mr. Nikhil Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **23.08.2024**

1. We had taken note of the challenge which stands raised in our order of 16 May 2024 with it being contended that the same would be liable to be answered in favour of the writ petitioner bearing in mind the judgment rendered by us in **Shantanu Awasthi vs Income Tax Officer, Ward 67(1), Delhi & Ors[1].**

2. While dealing with an identical challenge, we had in *Shantanu Awasthi* held as follows: -

> "1. The writ petitioners are constrained to approach this Court pursuant to demands being imposed against them despite tax having been duly deducted from the salary which was earned in the concerned Assessment Years. The default in deposit of TDS is attributed to the inaction of the employer.

[1] WP(C) 3518/2023 dated 08 May 2024

2. Pursuant to the earlier orders passed the respondents have, bearing in mind the Office Memorandum ["**OM**"] of the Central Board of Direct Taxes ["**CBDT**"] dated 11 March 2016, passed the following orders insofar as the writ petitioners in WP(C) 3545/2023 and 3547/2023 are concerned. Those orders are reproduced hereinbelow:

> **W.P.(C) 3545/2023 (Siddharth Arora)**
>
> "Sir/Madam/M/s.
>
> Subject: Online service of Orders – Letter
>
> **Stay of demand in the case of Siddharth Arora PAN-AHEPA8010H for the A.Y. 2021-22-reg**.
>
> Kindly refer to your writ petition filed before the Hon'ble Delhi High Court against the intimation u/s 143(1) of the Act consequent demand created for the A.Y. 2021-22 vide demand notice dated 18.09.2022 of Rs.12,76,564/- respectively issued by CPC, Bengaluru on the captioned subject.
>
> In this connection, your petition before the Hon'ble Delhi High Court has been perused and it was found that you have drawn the salary for the concerned years i.e. A.Y. 2021-22 and tax has been duly deducted but the same has not been deposited by the employer.
>
> In view of the above facts and circumstances and after taking into account of the CBDT office memorandum and further examining the legality and validity of the non-deposit of demand by the employer, your petition for stay of demand has been perused and after examination stay is hereby granted and demand is restrained by holding no coercive action is being taken against the demands for the A.Y. 2021-22."
>
> **W.P.(C) 3547/2023 (Ankit Vij)**
>
> "Sir/Madam/M/s.
>
> Subject: Online service of Orders – Letter
>
> **Stay of demand in the case of Ankit Vij, PAN: AHMPV9163C for the A.Y. 2020-21 & 2021-22-reg**.
>
> Kindly refer to your writ petition filed before the Hon'ble Delhi High Court against the intimation u/s

> 143(1) of the Act consequent demand created for the A.Y. 2020-21 & 2021-22 vide demand notice dated 03.02.2022 and 28.03.2022 of Rs.6,21,430/- & Rs. 1,95,600/- respectively issued by CPC, Bengaluru on the captioned subject.
>
> In this connection, your petition before the Hon'ble Delhi High Court has been perused and it was found that you have drawn the salary for the concerned years i.e. A.Y. 2020-21 & 2021-22 and tax has been duly deducted but the same has not been deposited by the employer.
>
> In view of the above facts and circumstances and after taking into account of the CBDT office memorandum and further examining the legality and validity of the non-deposit of demand by the employer, your petition for stay of demand has been perused and after examination stay is hereby granted and demand is restrained by holding no coercive action is being taken against the demands for the A.Y. 2020-21 & 2021-22."

> 3. We note that the CBDT's OM of 11 March 2016 seeks to address this very issue. Since the deduction of TDS from the salaries of the petitioners is not disputed, we find no justification for the demands being shown as outstanding against the writ petitioners.
>
> 4. We, accordingly, dispose of these three writ petitions on lines identical to those which have been adopted by the Assessing Officer in WP(C) 3545/2023 and 3547/2023.
>
> 5. We additionally call upon the respondents to ensure that all demands with respect to TDS as currently reflected against the petitioners on the Income Tax Business Application portal are consequently deleted."

3. Mr. Rai, learned counsel appearing for the respondent, on instructions submits that bearing in mind the judgment rendered by the Court, the concerned officer has already passed an order staying the demand which is shown to be outstanding against the writ petitioner in terms of an order dated 09 May 2024.

4. However, and having heard learned counsels for parties, we are of the opinion that the writ petition would be liable to be allowed on terms identical to those which were framed by us while disposing of

Shantanu Awasthi.

5. We accordingly allow the instant writ petition and quash the impugned demand letter dated 30 November 2023. The concerned Assessing Officer shall take remedial steps in terms of the directions framed by us in *Shantanu Awasthi*.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 23, 2024/RW