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

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Date of Decision : 01.10.2024+ **W.P.(C) 13765/2024 & CM APPL. 57690/2024****SATWANT SINGH SANGHERA**

.....Petitioner

Through: Mr Archit Arora, Advocate.

versus

**THE ASSISTANT COMMISSIONER OF
INCOME TAX & ANR.**

.....Respondents

Through: Mr Shlok Chandra, SSC, Ms Naincy Jain, and Ms Madhavi Shukla, JSCs and Mr Sushant Pandey, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning the intimation dated 10.01.2019 under Section 245 of the Income Tax Act, 1961 (hereafter *the Act*) and notice dated 09.11.2023 (hereafter *the impugned notices*) informing the petitioner of the outstanding demand aggregating ₹11,07,970/- along with interest in respect of the assessment years (hereafter *the AYs*) 2009-10 and 2011-12.

2. The petitioner claims that the said amount is reflected as payable on account of the Tax Deducted at Source (TDS) which was deducted from the petitioner's income by respondent no.2, but was not deposited with the Income Tax Authorities. The petitioner claims that the Revenue cannot



recover TDS from the petitioner in view of the Section 205 of the Income Tax Act, 1961 (hereafter *the Act*) as well as the instructions dated 01.06.2015 issued by the Government of India, Department of Revenue, Central Board of Direct Taxes.

3. The petitioner states that he was employed as a Co-Pilot with respondent no.2 (Kingfisher Airlines Ltd.) from 01.04.2008 till 15.12.2011. During the course of his employment, respondent no.2 had deducted Tax at Source (TDS) from the petitioner's salary. The petitioner filed his return of income tax for the AYs 2009-10 and 2011-12. Respondent no.2 deducted an aggregate amount of ₹11,07,970/- (Rupees Eleven Lakhs Seven Thousand Nine Hundred & Seventy Only) from the salary paid to the petitioner during the period relevant to the aforementioned assessment years (AYs 2009-10 and 2011-12).

4. The TDS deducted by respondent no.2 was duly reflected in Form 16A issued by respondent no.2. The petitioner thus claims that he is not liable to pay tax, which had been deducted by respondent no.2 from his remuneration.

5. The learned counsel for the Revenue has drawn the attention of this Court to the tabular statement annexed with the impugned notice dated 10.01.2019 issued under Section 245 of the Act and points out that four adjustments have been carried out in respect of the AY 2009-10, AY 2010-11, AY 2011-12, and AY 2017-18 respectively.

6. The said tabular statement is reproduced below:-

S No	PAN	The Outstanding demand	Demand Raised under	DIN	Demand Raised date	Demand Amount	Demand Uploaded by	Rectification rights
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		d pertain s to the AY	Section					with
1	AIGPS2835P	2009	1431a	2010200910017296166T	13.09.2010	717660	JAO	AO
2	AIGPS2835P	2010	1431A	2011201010074560124T	21.03.2012	545170	JAO	AO
3	AIGPS2835P	2011	1431a	2012201110023304690T	09.03.2013	640800	JAO	AO
4	AIGPS2835P	2017	1431a	2018201737033739193T	15.09.2018	42070	CPC	CPC

7. The learned counsel for the Revenue submits that the question of adjustment in respect of the AY 2009-10, AY 2010-11, and AY 2011-12 is covered in favour of the petitioner by the decision in *Sanjay Sudan v. The Assistant Commissioner of Income Tax & Another: Neutral Citation: 2023/DHC/1342*. However, the adjustment in respect of the outstanding demand of ₹42,070/- pertaining to the AY 2017-18 is permissible as the said amount is recoverable.

8. The learned counsel for the petitioner submits that the petitioner is not challenging the adjustment of demand of ₹42,070/- as set out in the impugned notices in respect of the AY 2017-18. The petitioner's challenge is confined to the adjustment of demand in respect of the earlier AY. He states that the demand in respect of AY 2017-18 was accepted by the petitioner and has been paid.

9. Concededly, the said issue is covered in favour of the petitioner by the earlier decision of the Coordinate Bench of this Court in *Sanjay Sudan v. The Assistant Commissioner of Income Tax & Another* (supra).

10. In view of the above, the impugned notices and order are set aside in respect of the adjustment of demands pertaining to the AY 2009-10; 2010-11; and AY 2011-12 as stated in the tabular statement set out in the intimation dated 10.01.2019. The Revenue shall pass the necessary



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consequential orders and process the refund of the amounts due if already adjusted.

11. The petition is allowed in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 01, 2024

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Click here to check corrigendum, if any