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

\+ W.P.(C) 2489/2025 & CM APPL. 11771/2025

GAUTAM MALHOTRA .....Petitioner

Through: Mr. Nikhil Goyal and Mr. Bankim Garg, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 70 1 ELHI & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC with Ms. Hemlata Rawat and Mr. V.K. Saksena, JSCs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **27.02.2025**

CM APPL. 11772/2025

1. Exemption allowed subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 2489/2025 & CM APPL. 11771/2025

3. The petitioner has filed the present petition, *inter alia*, praying as under:

> *"(i) Issuance a writ in the nature of Certiorari for quashing of a letter dated 20.01.2022 (Annexure P-29) being illegal and contrary to the provisions of the Act;*
>
> *(ii) Issue a writ in the nature of Certiorari for quashing demand reference 2010200910012389273T in AY 2009-10, demand reference 2011201010069283211T in AY 2010-11, demand reference 2012201110023308050T in AY 2011-12 and demand reference 2014201237032299393T in AY 2012-13 (Annexure P-24), created by the Respondents being illegal and contrary to the provisions of the Act;*

(iii) Issue a writ in the nature of Certiorari quashing the following adjustments of refunds due to the Petitioner against the demand for Assessment Year 2009-10, being illegal, and bad in law and directing the refund of the adjustments with applicable interest under the Act: a) Adjustment of refund of Rs 98,890/- for Assessment Year 2015-16 on 25.11.2016 as reflected in Form 26AS for AY 2009-10 (Annexure P-12); b) Adjustment of refund of Rs 11,200/- for Assessment Year 2021-22 communicated vide intimation dated 08.01.2022 (Annexure P-15); c) Adjustment of refund of Rs 75,130/- for Assessment Year 2022-23 communicated vide intimation dated 02.08.2022 (Annexure P-18); d) Adjustment of refund of Rs 46,250/- for Assessment Year 2023-24 communicated vide intimation dated 10.11.2023 (Annexure P-22); e) Adjustment of refund of Rs 72,950/- for Assessment Year 2024-25 on 29.07.2024 as reflected in Form 26AS for AY 2009-10 (Annexure P-12);

(iv) Issue a writ in the nature of: Mandamus directing the Respondents to extinguish the demand created against the Petitioner for AY 2009-10, AY 2010-11, AY 2011-12 and AY 2012-13 in terms of section 205 of the Act;

(v) Issue a writ in the nature of Mandamus restraining the Respondents adjusting any refund due to the petitioner against any demand reflected for the AYs 2009-10, 2010- 11,2011-12 and 2012-13;

(vi) Issue of any other appropriate writ or direction which this (vii) Hon'ble Court may deem 'fit and proper in the circumstances of the case."

4. It is the petitioner's case that demands in respect of AYs 2009-10, 2010-11, 2011-12 and 2012-13 are reflected as due from the petitioner on account of defaults committed by its employer (Kingfisher Airlines Limited). The petitioner submits that although the tax was deducted by the employer, it had failed and neglected in depositing the same at the material time.

5. The learned counsel appearing for the Revenue fairly submits that the prayers made by the petitioner be allowed as the issue involved in the present petition is covered by the earlier decision of this Court in ***Sanjay Sudan v. The Assistant Commissioner of Income Tax & Another*** reported in ***[2023] 148 taxmann.com 329 (Delhi)***; ***Neutral Citation: 2023:***

DHC:1342.

6. Thus, for the foregoing reasons, we also hold that the demands for AYs 2009-10, 2010-11, 2011-12 and 2012-13 raised as per notice dated 20.01.2022 are quashed. Respondents/Revenue are not entitled in law to adjust the demand raised for AYs 2009-10, 2010-11, 2011-12 and 2012-13 against any other AY. It is ordered accordingly.

7. In view of the above, the present petition is allowed and the Revenue is restrained from adjusting any refund due to the petitioner against any demand reflected for the AYs 2009-10, 2010-11, 2011-12 and 2012-13.

8. The petitioner has adverted to the fact that an amount of Rs.98,890/- for AY 2015-16, Rs.11,200/- for AY 2021-22, Rs.75,130/- for AY 2022-23, Rs.46,250/- for AY 2023-24, Rs.72,950/- for AY 2024-25 is liable to be refunded because of adjustment of demands.

9. As the amounts for Rs.98,890/- for AY 2015-16, Rs.11,200/- for AY 2021-22, Rs.75,130/- for AY 2022-23, Rs.46,250/- for AY 2023-24, Rs.72,950/- for AY 2024-25 irrespectively have been adjusted, the said amounts are directed to be refunded to the petitioner.

10. The petition is disposed of in the aforesaid terms.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

FEBRUARY 27, 2025
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