

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12965 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 12966 of 2018**

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DEVARSH PRAVINBHAI PATEL

Versus

ASST COMMISSIONER OF INCOME TAX CIRCLE 5 (1) (1)

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Appearance:

DARSHAN R PATEL(8486) for the PETITIONER(s) No. 1

MR MR BHATT, SENIOR ADVOCATE with MRS MAUNA M BHATT(174) for
the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 24/09/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These petitions are filed by the same petitioner for similar reliefs. We may therefore record facts from Special Civil Application No.12965 of 2018.
2. The petitioner is an individual. At the relevant time he was employed as a pilot of King Fisher Airlines. He had filed the return of income for the assessment year 2012-13 on 31.7.2012. During the relevant period the employer had deducted tax at source on salary payments made to the petitioner. Such TDS came to Rs.2,68,498/-. However the employer did not deposit such tax with the Government

revenue. The petitioner raised the demand of such TDS in his liability to pay tax to the Government. The Department however objected to this and raised equivalent tax demand with interest. Towards such recoveries the Department in fact adjusted a refund of Rs.47,140/- from the petitioner for the assessment year 2013-14. This happened on 24.4.2015. According to the petitioner, the stand of the Department is against the statutory provisions, decision of this Court in case of **Sumit Devendra Rajani vs. Assistant Commissioner of Income-tax, reported in (2014) 49 taxmann.com 31** and the CBDT circulars holding the field.

3. We have heard learned counsel for the parties and perused documents on record. Basic facts are not in dispute. In case of the petitioner the employer for the assessment year 2012-13 while paying salary had deducted tax at source to the tune of Rs.2,68,498/- but had not deposited such tax with the Government revenue. The short question is under such circumstances can the Department seek to recover such amount from the petitioner or whether the petitioner is correct in contending that he had already suffered the deduction of tax, the mere fact

that the deductee did not deposit such tax with the Government revenue could not permit the Income-tax Department to recover such amount from the petitioner.

4. The issue is no longer *res integra*. The Division Bench of this Court in case of **Sumit Devendra Rajani (Supra)** examined the statutory provisions and in particular Section 205 of the Income-tax Act, 1961. The Court concurred with the view of the Bombay High Court in case of **Asst. CIT VS. Om Prakash Gattani, reported in (2000) 242 ITR 638** and observed as under :-

"10. We are in complete agreement with the view taken by the Bombay High Court and Gauhati High Court. Applying the aforesaid two decisions of the Bombay High Court as well as Gauhati High Court, the facts of the case on hand and even considering Section 205 of the Act action of the respondent in not giving the credit of the tax deducted at source for which form no.16 A have been produced by the assessee - deductee and consequently impugned demand notice issued under Section 221(1) of the Act cannot be sustained. Concerned respondent therefore, is required to be directed to give credit of tax deducted at source to the assessee deductee of the amount for which form no.16 A have been produced.

11. In view of the above and for the reasons stated petition succeeds. It is held that the petitioner assessee deductee is entitled to credit of the tax deducted at source with respect to amount of TDS for which Form No.16A issued by the employer deductor - M/s. Amar Remedies Limited has been produced and consequently department is directed to give credit of tax deducted at source to the petitioner assessee - deductee to the extent

form no.16 A issued by the deductor have been issued. Consequently, the impugned demand notice dated 6.1.2012 (Annexure D) is quashed and set aside. However, it is clarified and observed that if the department is of the opinion deductor has not deposited the said amount of tax deducted at source, it will always been open for the department to recover the same from the deductor. Rule is made absolutely to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs."

5. Facts in both case are very similar. Under the circumstances, by allowing these petitions we hold that the Department cannot deny the benefit of tax deducted at source by the employer of the petitioner during the relevant financial years. Credit of such tax would be given to the petitioner for the respective years. If there has been any recovery or adjustment out of the refunds of the later years, the same shall be returned to the petitioner with statutory interest.

6. Petitions are disposed of.

(AKIL KURESHI, J)

(B.N. KARIA, J)

K.K. SAIYED