



ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.12607 of 2026
CNR No.ODHC010259932026

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

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Nirupama Nanda

Aged about 65 years

Wife of Ramakanta Das

At: Plot No.B-402

Shree Jagannath Palace Apartment

Acharya Vihar, Bhubaneswar

District: Khordha.

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Petitioner

-VERSUS-

- 1.** State of Odisha
Represented through
Commissioner-*cum*-Secretary to Government
Department of Higher Education
At: Lok Seva Bhawan, Bhubaneswar
District: Khordha.
- 2.** Director
Higher Education Department
At: Heads of Department Building
Bhubaneswar, District: Khordha.
- 3.** Principal
Salepur College, Salepur
At/P.O.: Salepur
District: Kataka.
- 4.** Principal
Sri Jayadev College of



Education and Technology

At: Naharkanta

Bhubaneswar, District: Khordha.

5. Income Tax Officer

Ward 3(4), 4th Floor, Vani Vihar

Rajaswa Vihar

Bhubaneswar, District: Khordha

Pin: 751 007.

6. Union of India

Represented by its Secretary

Ministry of Finance

Shastri Bhawan

New Delhi - 1.

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Opposite parties.

Counsel appeared for the parties:

For the Petitioner : M/s. Kshirod Kumar Rout,
S.K. Rout, S.K. Baral,
P.N. Pattnaik, T.S. Swarj,
S. Sthitaprajna and S. Nath,
Advocates

For Opposite party No.5 : Mr. Avinash Kedia,
Junior Standing Counsel
(Income Tax Department)

For Opposite Party No.6 : Mr. Satya Narayan Pattnaik,
Central Government Counsel

P R E S E N T:

**HONOURABLE
DR. JUSTICE SANJEEB K PANIGRAHI**

AND

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**



Date of Hearing : 30.09.2026 :: Date of Judgment : 07.10.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Questioning the propriety and legality of communication from the Demand Management Facilitation Centre (DFC), Centralized Processing Centre (CPC), Bengaluru (Annexure-3) seeking to recover outstanding demand (Demand Identification No.2014201337018415426T) against the petitioner-assessee assigned with PAN No.ACMPN2024R, invoking provisions under Articles 226 and 227 of the Constitution of India this writ petition has been filed with the prayer to grant following relief(s):

“Under the circumstances stated above, the petitioner therefore most humbly prays that the Hon’ble Court be pleased to admit the writ application, issue notice to the parties and after hearing from the Advocates of the parties, issue a writ in the nature of certiorari or any other suitable writ quashing the demand notice vide Annexures-3 and 6 and further issue a writ in the nature of mandamus directing the opposite parties to file the TDS return, furnish the documents required by the Income Tax Department and settle the issue within a stipulated period.

And/or pass any other order/orders, direction/directions as this Hon’ble Court deems fit and proper for the ends of justice.

And for the said act of kindness, the petitioner as in duty bound shall ever pray.”



Facts:

2. Facts as adumbrated in the writ petition reveals that after completing her post-graduation course and M.Phil., the petitioner appointed as a Zoology Lecturer at Vyasanagar College, Jajpur Road, Jajpur, joined on 07.03.1990. She, subsequently, served in different colleges and joined Salepur College on 02.08.2000. While serving there, the Principal of said College deducted tax at source (“TDS”, for short) with respect to the assessment years 2010-11, 2011-12, 2012-13 and 2013-14 at the time of payment of salary. As a result of non-disclosure of correct figures by the employer/ Principal in the returns, Form 26AS relating to the petitioner did not depict actual figures.

2.1. In 2012, the petitioner was transferred from Salepur College to Sri Jayadev College of Education and Technology, where she joined as a Lecturer in Zoology. During the assessment year 2013-14, though a sum of Rs.3,92,913/- was deducted as TDS from her salary, the Principal failed to correctly reflect said amount of TDS so deducted in its return.

2.2. Request was made to the jurisdictional assessing authority, namely, Income Tax Officer, Ward-3(4), Bhubaneswar on 08.04.2016 by the petitioner in response to the demand notices for the assessment years in question for rectification of mistake in the



assessment framed under Section 143(1) of the Income Tax Act, 1961 (for short, “IT Act”) pertaining to the assessment years 2009-2010, 2010-11, 2011-12, 2012-13 and 2013-14. The petitioner has claimed to have submitted copies of salary certificate(s) and details of TDS by the employer(s). Notwithstanding such request being made, the authority concerned issued intimations to discharge liability as per demand notices indicating outstanding tax to be paid, which compelled the petitioner to file the instant writ petition for showing intervention in the matter.

Arguments:

3. With the aforesaid factual backdrop, Sri Kshirod Kumar Rout, learned Advocate, submitted that during the service career, the petitioner has worked in different colleges and the concerned employer(s) deducted advanced tax in shape of “tax deducted at source”. With reference to evidence of such deductions being made by the employer(s), as at Annexures-1 and 2 enclosed with the writ petition, it is pointed out that the communication made by the Demand Management Facilitation Centre (DFC), Centralized Processing Centre (CPC), Bengaluru *vide* Annexure-3, depicting outstanding amount of tax has legs to stand inasmuch as the TDS amount(s) has not been taken into consideration.



3.1. It is vehemently contended by Sri Kshirod Kumar Rout, learned Advocate that given a chance, the petitioner would demonstrate before the authority concerned that the demand of tax shown as outstanding would be reduced to NIL.

4. Sri Avinash Kedia, learned Junior Standing Counsel stemming on the provisions of Section 199 of the Income Tax Act, 1961 read with Rule 37BA of the Income Tax Rules, submitted that credit for tax deducted at source can only be granted where the corresponding amount deducted at source is deposited with the Central Government and reflected in the system-generated Annual Tax Statement/Form 26AS. Having reference to the stand taken in the counter affidavit filed by the Income Tax Officer-opposite party No.5, he submitted that the Demand Management Facilitation Centre (DFC), Centralized Processing Centre (CPC), Bengaluru found mismatch between the amounts claimed as deduction under the heading “TDS” by the petitioner-assessee and the amount(s) of TDS as reflected in Form-26AS.

4.1. To justify the demands as depicted by the Income Tax Department, he has pressed into service the facts asserted at Paragraphs 15 and 16 of the counter affidavit, which are reproduced herein below:



“15. That as per the departmental records, the status of TDS claimed and TDS reflected in Form 26AS is as follows:

A.Y.	TDS claimed by petitioner	TDS reflected in 26AS	TDS credit allowed under Section 143(1)
2010-11	Rs.24,8171	Nil	Nil
2011-12	Rs.65,949/-	Nil	Nil
2012-13	Rs.29,366/-	Nil	Nil
2013-14	Rs.4,11,610/-	Rs.4,09,610/-	Rs.3,96,913/-

16. That while processing the return for A.Y. 2013-14, TDS credit of Rs.3,96,9131- was allowed, being the TDS reflected in respect of Sri Jayadev College of Education and Technology.”

4.2. Premised under the above facts, the learned Junior Standing Counsel explained that since figures of tax deposited with the Income Tax Department do not show the amount of TDS as claimed by the petitioner in the records, the outstanding demands as depicted in the table above and/or the demand notices are liable to be collectible by the Department and the demand is required to be discharged by the petitioner.

5. Sri Satya Narayan Pattnaik, learned Central Government Counsel appearing for opposite party No.6 supported the arguments of Sri Avinash Kedia, learned Junior Standing Counsel.

Hearing:

6. Heard Sri Kshirod Kumar Rout, learned Advocate appearing for the petitioner and Sri Avinash Kedia,



learned Junior Standing Counsel representing the opposite party No.5 and Sri Satya Narayan Pattnaik, learned Central Government Counsel appearing for opposite party No.6.

6.1. As the writ petition hovers round the correctness of figures shown as deducted and claimed by the petitioner, on the consent of the counsel for the respective parties, the matter is heard finally.

6.2. After conclusion of hearing, the matter stood reserved for preparation and delivery of judgment/order.

Discussions and consideration of rival contentions:

7. Perusal of record transpires that the following demands are stated to be outstanding:

Sl. No.	A.Y	Demand Reference Number	Demand Outstanding (in INR)	Date of Demand	Demand raised by	Reason for the Demand
1	2010	2011201010075790875T	30790.0	27-Mar-2012	AO	
2	2011	2012201110025200264T	87500.0	20-Mar-2013	AO	
3	2012	2013201237012947772T	34960.0	07-Jun-2013	CPC	
4	2013	2014201337018415426T	17600.0	26-Jul-2014	CPC	

7.1. This Court, thus, finds that the only consideration is left to be decided is regarding difficulty faced by the assessee (tax payer) relating to the credit of tax deducted at source by the employer-deductor. It is evident from the counter affidavit that there is mismatch between TDS claimed and TDS reflected in Form 26AS. Documents enclosed with the writ petition have been relied upon by the petitioner to demonstrate that the amount of TDS



being not shown by the employer(s) in its returns, the outstanding amount is directed to be deposited by the Income Tax Department. This Court perceives that if the claim of the petitioner turns out to be true, and directing the petitioner to deposit the amount shown to be outstanding would cause prejudice as it would tantamount to double taxation. At the same time it is also to be noted that the factual dispute is required to be reconciled by the Income Tax Department. As the request made by way of applications for rectification, copies of which formed part of writ petition at Annexure-4 series, is yet to be taken care of by the concerned authority, the petitioner-assessee is entitled to a fair treatment and opportunity of hearing.

7.2. As it is specific case of the petitioner that the TDS amount has not been correctly reflected by the deductor(s), the petitioner should not be made to suffer double jeopardy. The assessing authority, in such situation, may call for confirmation from the employer(s)/deductor(s) and/or issue summons to produce concerned records showing deductions made from payments made to the petitioner at the relevant period. The deducting authority is obligated to make deposits of the amounts of tax deducted at source.

7.3. Notice of provisions of statute is required to be taken into consideration. Section 191 of the IT Act envisages



that in the case of income in respect of which provisio is not made under Chapter XVII— COLLECTION AND RECOVERY OF TAX— for deducting income tax at the time of payment, and in any case where income tax has not been deducted in accordance with the provisions of said Chapter, income tax shall be payable by the assessee. In the present case as the documents enclosed with the writ petition suggests that deduction has been made by the employer at the time of payment of salary to the petitioner. *Explanation* appended to Section 191 of the IT Act makes it abundantly unequivocal that it is the employer who is entrusted with the liability to deduct tax at the time payment to the employee. Said *Explanation* in no ambiguous terms specifies that any person who is required to deduct any sum in accordance with the provisions of the Act or referred to in sub-section (1A) of Section 192, being an employer, does not deduct, or after deducting fails to pay, the whole or any part of the tax, as required by or under the Act, and where the assessee has also failed to pay such tax directly, then such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of Section 201(1) of such tax. Section 192(1) of the IT Act lays down that any person responsible for paying any income chargeable under the head “Salaries” shall, at the time of payment, deduct income tax on the amount payable at



the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. Thus, said provision makes it obligatory for the employer to deduct tax at source and deposit. Sub-section (2C) of Section 192 further specifies that a person responsible for paying any income chargeable under the head “Salaries” shall furnish to the person to whom such payment is made a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in such form and manner as may be prescribed. Sub-section (2D) thereof provides that the person responsible for making the payment referred to in sub-section (1) shall, for the purposes of estimating income of the assessee or computing tax deductible under sub-section (1), obtain from the assessee the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed. Therefore, if the amount of TDS is not reflected in the employer’s tax records, the petitioner (employee), having not received credit for it in course of assessment, liability ought not to be fastened on the latter on account of resulting shortfall unless steps are taken for recovery from the employee-deductor.



7.4. To support such view, provisions of Section 201, Section 203 and Section 205 can be taken aid of. Section 201 of the IT Act, 1961 (corresponding to Section 398 of the Income Tax Act, 2025), deals with “CONSEQUENCES OF FAILURE TO DEDUCT OR PAY”. Sub-section (1) thereof specifies that where any person who is required to deduct any sum in accordance with the provisions of the Act or being an employer does not deduct or does not pay or after so deducting fails to pay, the whole or any part of the tax, as required by or under the Act, then such person shall be deemed to be an assessee-in-default in respect of such tax. Upon failure to perform the acts contemplated under sub-section (1) of Section 201, the consequences provided under the other sub-sections thereof shall fall upon the employer. As is made clear by the petitioner and is manifest from documents enclosed at Annexures-1 and 2 series that the employer has deducted TDS and collected amount of tax from the petitioner-employee’s salary. Such fact could have been enquired into had the request in form of application(s) for rectification in Annexure-4 series addressed to the Income Tax Officer, Ward 3(4), Bhubaneswar been taken up for consideration. If the employer(s) did not deposit despite deduction of tax at source from the payments made to the petitioner, or correctly reflected in its returns, the employer(s) was to be treated as the assessee-in-default and is liable for interest and



penalties under Section 201 of the Income Tax Act, 1961.

- 7.5. It may be necessary to point out that in order to claim deduction of amount of TDS, the petitioner may be required to submit proof of salary deductions and correspondence(s) with the employer. The petitioner has demonstrated that she, in fact, had approached the authority concerned with relevant documents (See, Annexures-1 and 2 series). However, under the relevant statutory provisions, a failure to comply with these requirements invites legal action against the employer, not the employee.
- 7.6. It is pertinent to highlight that various provisions of the IT Act confer powers on the authorities to enforce both the payment of tax by the deductor and the issuance of the corresponding certificate to the payee. Whereas Section 201 of the IT Act vests responsibility on the employer to deduct tax at source and deposit with the Income Tax Department, Section 203 of the IT Act requires every person deducting tax under Chapter XVII, dealing with COLLECTION AND RECOVERY OF TAX, to *“furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the*



rate at which the tax has been deducted and such other particulars as may be prescribed”.

7.7. A reference to *Kartik Vijaysinh Sonavane Vs. CIT, (2022) 440 ITR 11 (Guj)* may be relevant in the present context. In the said case it has been observed as follows:

“7. The factual matrix presented before this court has not been disputed. It is also not being disputed that the case is no longer *res integra* and is covered by the decision of this very court rendered in case of *Devarsh Pravinbhai Patel Vs. Asst. CIT (S.C.A. No. 12965 of 2018 with S.C.A. No. 12966 of 2018, decided on September 24, 2018)* where too, the petitioner was an employee of the Kingfisher Airlines and worked as a pilot. In his case also the tax deducted at source on the salary made to the petitioner had not been deposited. It is only when the Department raised the tax demand with interest and initiated the actions of the recovery that this court was approached. Relying on the decision of the Bombay High Court rendered in case of *Asst. CIT Vs. Om Prakash Gattani (2000) 242 ITR 638 (Gauhati)*, this court allowed the same. Vital would be to reproduce the relevant findings and observations.

‘4. The issue is no longer *res integra*. The Division Bench of this court in the case of *Sumit Devendra Rajani Vs. Asst. CIT (OSD), (2014) 369 ITR 673 (Guj)* 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 (*sic*. Gauhati High Court) in the case of *Asst. CIT Vs. Om Prakash Gattani, (2000) 242 ITR 638*



(Gauhati) and observed as under—(page 681 of 369 ITR)

- ‘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 the 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 16A have been produced by the assessee-deductee and consequently, the impugned demand notice issued under Section 221(1) of the Act cannot be sustained. The 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 16A have been produced.*
- 11. In view of the above and for the reasons stated, the petition succeeds. It is held that the petitioner assessee deductee is entitled to the credit of the tax deducted at source with respect to amount of TDS for which form 16A issued by the employer-deductor-M/s. Amar Remedies Limited has been produced and **consequently the Department is directed to give credit of the tax deducted at source to the petitioner assessee-deductee to the extent form 16A issued by the deductor have been issued.** Consequently, the impugned*



demand notice dated January 6, 2012 (annexure D), is quashed and set aside. **However, it is clarified and observed that if the Department is of opinion that the 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. The facts in both cases 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.'
8. In the case of Om Prakash Gattani (supra) the Gauhati High Court was dealing with the tax deducted at source not deposited of prize money payable to the petitioner. It held and observed thus (pages 643 to 646 of 242 ITR):

'From a perusal of the provisions quoted above relating to the deduction of tax at source in the matters relating to prize money of lotteries, it is evident that the person responsible to make the payment to the assessee is under the statutory



obligation to deduct the amount at source. After deduction of the amount he is required to deposit the same to the credit of the Central Government and to issue a certificate of deduction. **So far as credit for the amount deducted is concerned, it is to be given on the deposit being made to the credit of the Central Government on production of a certificate furnished under section 203 of the Income-tax Act.** On payment of the amount to the credit of the Central Government, it would be treated as payment of tax.

So far the assessee is concerned, he is not supposed to do anything in the whole transaction except that he is to accept the payment of the reduced amount from which is deducted Income-tax at source. The responsibility to deposit the amount deducted at source as tax is that of the person who is responsible to deduct the tax at source. On the amount being deducted the assessee only gets a certificate to that effect by the person responsible to deduct the tax. In a case where the amount has been deducted by the person responsible to deduct the amount under the statutory provisions, the assessee has no control over the matter. In case of default in making over the amount to the account of the Central Government, it is obviously the person responsible to deduct or the person who has made the deduction who is held responsible for the same. The responsibility of such person is to the extent that he has to be deemed to be an assessee-in-default in respect of the tax. He may be deemed to be an assessee-in-default not



only in cases where after deduction he does not make over the amount to the Central Government but also in cases where there is failure on his part to deduct the amount at source. This responsibility has been fastened upon him under Section 201 of the Income-tax Act. It is, of course, without prejudice to any other consequences which he or it may incur. Presently we are not concerned with the case where the person responsible to make the deductions has not deducted the amount at all. It may or may not fall in a different category from one where the amount has been deducted and not made over to the Central Government. We are concerned with the latter category of cases. As indicated earlier, on the facts it is nobody's case that the amount was actually not deducted at source by Chandra Agencies. What seems to be in dispute is the deposit of the said amount in the account of the Central Government. The Income-tax Department seems to have made enquiries about the exact date of payment to the Central Government which Chandra Agencies could not furnish on the ground that the papers were forwarded to the chairman of Vaibhavshali Bumper. In such a category of cases we feel that the amount of tax can be recovered by the Income-tax Department treating the person responsible to deduct tax at source as an assessee-in-default in respect of the tax. It would not be possible to proceed to recover the amount of tax from the assessee. **The assessee cannot be doubly saddled with the tax liability. Deduction of tax at source is only one of the modes of recovery of tax. Once this mode is adopted and by virtue of the statutory provisions the person**



responsible to deduct the tax at source deducts the amount, only that mode should be pursued for the purpose of recovery of tax liability and the assessee should not be subjected to other modes of recovery of tax by recovering the amount once again to satisfy the tax liability. It is, therefore, provided under Section 201 of the Income-tax Act that the person responsible to deduct the tax at source would be deemed to be an assessee-in-default in case he deducts the amount and fails to deposit it in the Government treasury. As observed earlier, the assessee has no control over such person who is responsible to deduct the income- tax at source, but fails to deposit the same in the Government treasury. In this light of the matter, in our view, the notices issued under Section 226(3) of the Income-tax Act to the bankers of the petitioner-respondent to satisfy the tax liability from the bank account of the petitioner-respondent are illegal. It is not that the Income-tax Department was helpless in the matter. **The person responsible to deduct the tax at source would move into the shoes of the assessee and he would be deemed to be an assessee-in-default. Whatever process or coercive measures are permissible under the law would only be taken against such person and not the assessee.**

However, the position as indicated above would not mean that mere deduction of the tax amount at source would amount to total discharge of the tax liability so long as the amount deducted is not deposited in the coffers of the Central Government. **It is for this reason Section 199 of the Income-tax Act makes it clear that credit for tax**



deducted would be given when the amount is deducted and paid to the Central Government and a certificate of deduction is produced as furnished under Section 203 of the Income-tax Act. It is obvious that unless the amount is paid to the Central Government, the tax liability is not discharged, nor can it be said that the assessee has made the payment of the tax amount payable to the Government. We find no force in the submission made on behalf of the petitioner-respondent that on mere deduction of the amount at source, credit for tax deducted must be given and it cannot be withheld even though the person responsible to deduct the tax at source has not made it over to the Central Government. In our view, if that contention is accepted that credit for tax deducted has to be given on mere deduction of the amount at source, in that event, perhaps, there would be no legal justification to treat the person responsible to deduct the amount at source as an assessee-in-default in respect of the tax. Once credit on account of payment of tax is given, the tax liability will stand discharged. Any step to recover the amount of tax can be taken only in case the tax liability is not discharged and it still subsists. In this view of the matter, Shri K.P. Sarma, learned counsel appearing for the Revenue, has rightly defended the note appended by the Assessing Officer in the order of assessment making it clear that credit for the amount deducted was not being given and that will be given only when evidence as to actual payment of the amount to the Central Government is furnished. But this position would not legally justify initiation of recovery proceedings against the assessee from



*whose Income-tax has been deducted at source, but the person responsible to deduct the tax fails to deposit the same in the Government treasury. The statutory scheme evolved to employ this mode of recovery of tax at source also points to the same position and in our view rightly. Otherwise a taxpayer from whose Income-tax is liable to be deducted at source would be exposed to a great vulnerable position. If some unscrupulous persons responsible to deduct the tax at source, after deducting the amount do not deposit the amount in the Government treasury, such persons should be saddled with the tax liability. Therefore, under Section 201 of the Income-tax Act it has been aptly provided that the person responsible to deduct the tax would be deemed to be an assessee-in-default so that he can be proceeded against for recovery of the amount instead of the assessee who has already parted with the amount, but due to some commission or omission on the part of the person responsible to deduct the amount at source over whose activity he has no control, he may not be subjected to double payment of tax and brunt of arduous recovery proceeding. **The provisions as contained in Section 201 of the Act provide a kind of protection to the assessee where tax liability as standing against him is not yet discharged and credit for the amount deducted cannot be given in terms of Section 199 of the Income-tax Act.***

A perusal of Section 205 of the Income-tax Act clarifies the position where it provides that where tax is deductible at source, the assessee shall not be called upon to pay the tax himself to the extent to



*which tax has been deducted from that income. **What is noticeable in this provision is that its applicability is not dependent upon the credit for tax deducted being given under Section 199 of the Income-tax Act. What is necessary for applicability of this provision is that the amount has been deducted from the income. In case where the amount has been deducted but not paid to the Central Government that eventuality is taken care of by Section 201 of the Income-tax Act. Learned counsel for the appellant could not show that under the law it may be permissible to proceed against the assessee even after deduction of the tax at source, nor learned counsel for the petitioner-respondent could persuade us to hold that merely by deduction of tax at source, credit for deduction of tax at source has to be given even though the amount may not have been made over to the Government treasury. The reason for this has already been explained by us in the discussion held in the earlier part of this judgment as the mere deduction of tax at source would not close the chapter of tax liability unless it is deposited in the Government treasury.***

9. *The facts being almost identical, no separate reasoning are desirable and the petition is being allowed. The Department is precluded from denying the benefit of the tax deducted at source by the employer during the relevant financial years to the petitioner."*



7.8. It may be pertinent to have regard to the observation made in *Chintan Bindra Vs. CIT*, (2024) 470 ITR 346 (Del):

“8. *The petitioner having accepted the salary after deduction of income tax at source had no further control over it in the sense that thereafter it was the duty of his employer acting as tax collecting agent of the Revenue under Chapter XVII of the Act to pay the deducted tax amount to the Central Government in accordance with law. **The employer of the petitioner having failed to perform his duty to deposit the deducted tax with the Revenue, the petitioner cannot be penalized. It would always be open for the Revenue to proceed against the employer of the petitioner for recovery of the deducted tax.***”

7.9. There is no material on record to suggest that the authority exercised such powers to enforce the payment of tax deducted at source or the issuance of the certificate, despite the petitioner filed response seeking rectification of demands by giving credit for the TDS withheld by the employer(s). Consequently, the petitioner cannot be held liable for consequences that were entirely beyond her control. Once the petitioner furnishes the requisite certificate(s) obtained from the employer, the *onus* is discharged and the burden to prove otherwise lies with the employer.

7.10. It is a well settled principle of interpretation of statute that a provision must be construed in such a manner so



as to make it workable. In *Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam*, (1989) 2 SCR 544 the Hon'ble Supreme Court observed,

“The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle ‘ut res majis valeat quam periat’. It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness.”

7.11. In *Narmada Bachao Andolan Vs. State of Madhya Pradesh*, (2011) SCR 443 it has been laid down as follows:

“70. In Principles of Statutory Interpretation by Justice G.P. Singh (12 Edn. 2010), the learned Author has stated as under:

*‘In selecting out of different interpretations ‘the court will adopt that which is just, reasonable and sensible rather than that which is none of those things’. *** A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.’ (pp. 131-132).*

71. In *Directorate of Enforcement Vs. Deepak Mahajan*, AIR 1994 SC 1775, this Court held as under:



‘Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:

*‘Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.’ ***”*

7.12.A Co-ordinate Bench of this Court, in a similar fact-situation that is portrayed herein, held in *Malay Kar Vs. Union of India, 2024 (II) ILR-CUT 796* as follows:

- “3. ***** It is contended that even if tax has been deducted at source by the deductor and a part of the amount has not been transmitted to the Income Tax Department, the petitioner is not held responsible for that. For inaction of the deductor in transmitting the amount, the assessee has been put to difficulty by not giving credit of tax deducted** amounting to Rs.2,68,733/- which also carries interest of Rs.55,417/- under Section 234B and 234C of the I.T. Act for shortfall of prepaid taxes. It is further contended that Section 205 of the I.T. Act specifically



provides bar against direct demand on assessee and the same has been clarified by the Central Board of Direct Taxes (CBDT), vide circular dated 01.06.2015, and in the office memorandum issued on 11.03.2015. Therefore, necessary compliance has to be made thereof and without doing so, demand raised under Annexure-4 amounting to Rs.3,24,149 for the assessment year 2013-14 cannot be sustained in the eye of law. To substantiate his contentions, he has relied upon Rakesh Kumar Gupta Vs. Union of India, (2015) 276 CTR (All) 379 = (2014) 365 ITR 143 (All); Kartik Vijaysinh Sonavane Vs. Deputy Commissioner of Income Tax, Circle-8, (2021) 132 taxmann.com 293 (Gujarat) = (2022) 440 ITR 11 (Gujarat) and Milan Arvindbhai Patel Vs. Assistant Commissioner of Income Tax, (2023) 149 taxmann.com 190 (Gujarat).

6. *On the basis of the factual matrix, as discussed above, the only consideration is left to be decided with regard to difficulty faced by the assessee (tax payer) relating to the credit of tax deducted at source (TDS) which has been paid by the deductor. But, a part of the same has been transmitted to the Central Government, whereas a part of the same has not been transmitted by the deductor. Therefore, the Court found that a less percentage of the cases where the assessee is entitled to be given to the credit of TDS which has been deducted by the deductor, but has not been given credit by income tax on account of the fact that TDS has not been reflected in Form 26AS for various reasons. **Obviously, there are different grounds and one of such grounds is that where the deductor failed to upload the***



true particulars of TDS, which has been deducted, as a result of which, the assessee was not given credit of tax paid. It has also been brought to the notice of this Court that there are cases where the details uploaded by the deductor and the details furnished by the assessee in income tax returns were mismatched, on that count credit was not given to the assessee. **Due to such mismatch, the assessee is required to approach the Income Tax authority for rectification of their earlier intimation and based on the character entries and pray for refund of TDS, but the same is not attended to, which has happened in the present case.** It has been brought to the notice of this Court by the Department that these problems are apparent, real and enormous and has escalated because of centralized computerization and problem associate with incorrect/wrong data which was uploaded by the tax deductor. Therefore, the issue of not giving credit of the TDS deducted by the deductor is one of the general governance, failure of administration, fairness and arbitrariness.

8. Section 205 of the Income Tax Act reads as follows:

‘205. Where tax is deductible at the source under the foregoing provisions of this Chapter, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.’

In view of the aforementioned provision, it is made clear that the assessee shall not be called upon to



pay the tax himself to the extent to which tax has been deducted from that income.

9. *There is no dispute before this Court that tax has not been deducted by the deductor at source of the assessee. To mitigate such situation, the CBDT, vide clause-2 of its circular dated 01.06.2015, envisaged as follows:*

*‘2. As per Section 199 of the Act credit of Tax Deducted at Source given to the person only if it is paid to the Central Government Account. **However, as Section 205 of the Act the assessee shall not be called upon to pay the tax to the extent tax has been deducted from his income where the tax is deductible at source under the provision of Chapter XVII. Thus the Act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch cannot be enforced coercively.***’

10. *Referring to such circular dated 01.06.2015, the CBDT also issued office memorandum on 11.03.2016, paragraph-3 whereof reads as follows:*

*‘3. In view of the above, the Board hereby reiterated the instructions contained in its letter dated 01.06.2015 and **directs the assessing officers not to enforce demands created on account of mismatch of credit due to non-payment of TDS amount to the credit of the Government by the deductor.** These instructions may be brought to the notice of all assessing officers in your Region for compliance.’*



Needless to say both the circular and the office memorandum have been issued in consonance with the provisions contained in Section 205 of the I.T. Act. In the office memorandum dated 11.03.2016, it has been mentioned that the Board had issued directions to the field officers that in case of an assessee whose tax has been deducted at source but not deposited to the Government's account by the deductor, the deductee-assessee shall not be called upon to pay the demand to the extent tax has been deducted from his income. It was further specified that Section 205 of the I.T. Act puts a bar on direct demand against the assessee in such cases and the demand on account of tax credit mismatch in such situations cannot be enforced coercively.

11. *In Taylor Vs. Taylor, (1876) 1 Ch D 426, it was laid down that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts. Lord Roche in Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253 followed the aforesaid principle. Subsequently, the said principle has been well recognized by the apex Court and is holding the field till today, as would be evident from State of Uttar Pradesh Vs. Singhara Singh, AIR 1964 SC 358; Chandra Kishore Jha Vs. Mahabir Prasad, AIR 1999 SC 3558, Babu Verghese Vs. Bar Council of Kerala, (1999) 3 SCC 422; Dhananjay Reddy Vs. State of Karnataka, AIR 2001 SC 1512; Gujarat Urja Vikas Nigam Ltd. Vs. Essar Power Ltd., AIR 2008 SC 1921; Ram Deen Maurya Vs. State of U.P., (2009) 6 SCC 735 and Zuari Cement Limited Vs. Regional*



Director, Employees' State Insurance Corporation, Hyderabad and others, (2015) 7 SCC 690. The said principle has also been referred by this Court in the case of Subash Chandra Nayak Vs. Union of India, 2016 (I) OLR 922; Rudra Prasad Sarangi Vs. State of Orissa, 2021 (I) OLR 844; Bamadev Sahoo Vs. State of Orissa, 132 (2021) CLT 927 = 2021 (Supp.) OLR 674; and Raj Kishor Deo Vs. State of Odisha, 2022 (II) OLR 415.

12. *Section 205 of the IT Act read with CBDT circular, referred to above, being statutory one, the said provision has to be adhered to in letter and spirit and to give effect to such provision, CBDT circular was issued on 01.06.2015 and the office memorandum was issued on 11.03.2016. Therefore, for tax credit mismatch cannot be enforced coercively against the petitioner-assessee.*

15. *The facts and law, as discussed above, are directly applicable to the present case and in view of the provisions contained in Section 205 of the I.T. Act, which provides that where tax is deductible at the source the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income and its applicability is not depending upon the credit for tax being given under Section 199 of the I.T. Act. Thereby, the department shall not deny the benefit of tax deducted at source by the employer during the relevant financial years to the petitioner. The credit of the tax shall be given to the petitioner and if in the interregnum, any recovery or adjustment is made by the department, the petitioner shall be entitled to the*



refund, with the statutory interest, within eight weeks from the date of receipt of the copy of this judgment.”

Conclusion:

8. Having noted the conspectus of law, and upon considering the facts narrated in the writ petition alongside the objections raised in the counter-affidavit, it is evident from Paragraph 10 of Income Tax Officer’s affidavit that the dispute revolves around the following aspect:

“10. That although the petitioner has relied upon Form-16 certificates showing deduction of TDS, the corresponding Form 26AS for the relevant assessment years either showed ‘No Transactions Present’ or did not reflect the full amount of TDS claimed by the petitioner.”

8.1. It emerges from the papers enclosed with the writ petition that certain amounts have been deducted by the employers during the periods in question and the petitioner had approached the Income Tax Officer for ventilation of grievance. Having regard to the definition of “hearing” as envisaged under Section 2(23C) of the IT Act, that the term “includes communication of data and documents through electronic mode”, in the light of discussions made in the foregoing paragraphs, it is felt expedient to direct the authority concerned as follows:



- i.* The petitioner/her representative is directed to approach the Income Tax Officer, Ward 3(4), Bhubaneswar, along with documents enclosed with the writ petition at Annexure-4 series within a period of fifteen days from date;
- ii.* The petitioner is directed to furnish certificates or documents proving the Tax Deducted at Source (TDS) claimed in the corresponding returns for the assessment years in question, and to submit a comprehensive application, if so advised;
- iii.* The Income Tax Officer concerned shall deal with such evidence, as would be submitted by the petitioner on the date of appearance forthwith or on the adjourned date(s);
- iv.* Taking note of objection raised in the counter affidavit filed by the Income Tax Officer, Ward 3(1)/(4), Bhubaneswar that the approach was to be made to the “jurisdictional Assessing Officer (TDS)”, it is apposite to direct that if the Income Tax Officer, Ward 3(1)/(4), as the case may be, is not competent to deal with TDS matters, he shall facilitate the petitioner to produce the above documents/records before the jurisdictional officer;
- v.* The jurisdictional officer shall examine the factual position and in the event of necessity, he shall



summon the concerned employer and call for records from such employer/custodian of the records, in order to verify the veracity of the claim of the petitioner with respect to amounts of TDS;

vi. Upon being satisfied, the competent authority having jurisdiction and identified by opposite party No. 5 in the counter-affidavit shall take necessary follow-up action to rectify or amend the outstanding demands for the periods in question.

vii. Entire exercise is directed to be concluded within a period of three months from the date of first appearance of the petitioner as directed herein above.

9. In the result, with the above observations and directions the writ petition stands disposed of and pending interlocutory application(s) shall also be disposed of; but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

DR. SANJEEB K PANIGRAHI, J.—

I agree.



(DR. SANJEEB K PANIGRAHI)
JUDGE

High Court of Orissa, Cuttack
The 07th October, 2026//Aswini/Laxmikant