

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

ITA No.1533/KOL/2025

(निर्धारण वर्ष /Assessment Year : 2024-2025)

Ajay Kumar Goel Sobha Magnolia, Flat No.C182, Bannerghatta Main Road, Bengaluru-560029	Vs	DCIT, Circle-52(1), Kolkata
PAN No. :AEAPG 8383 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.K.Tulsiyan, Advocate & Abha Agarwal, FCA
राजस्व की ओर से /Revenue by	:	Shri Sandeep Lakra, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	24/11/2025
घोषणा की तारीख/ Date of Pronouncement	:	24/11/2025

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order passed by the Id.Addl/JCIT(A), Gwalior, dated 02.06.2025 for the assessment year 2024-2025.

2. It was submitted by the Id. AR that the assessee is an employee of M/s Think & Learn Private Limited. It was the submission that the assessee had been receiving salary from the said concern. The said concern had deducted TDS from his salary to an extent of Rs.14,881,489/-. It was the submission that the said concern admittedly had not deposited the TDS to the account of the Central Government. When the assessee had filed his return of income, the assessee had claimed credit of the TDS was deducted in the salary. It was submission that in the intimation issued, the credit of the TDS had not been granted and a demand was raised against the

assessee in lieu of the credit of the TDS not granted. It was submission that in view of the Instruction issued by CBDT in Instruction No.275/29/2014-(IT)-(B), dated 01/06/2015, the assessee should be put at any inconvenience on account of default of deposit of tax into the Government account by the deductor. The said instruction reads as follows:-

INSTRUCTION NO.275/29/2014-IT(B)

SECTION 199 OF THE INCOME-TAX ACT, 1961-DEDUCTION OF TAX AT SOURCE-CREDIT FOR TAX DEDUCTED-NON-DEPOSIT OF TAX DEDUCTED AT SOURCE

INSTRUCTION NO.275/29/2014-IT-(B), DATED 1-6-2015

Grievances have been received by the Board from many taxpayers that in their cases the deductor has deducted tax at source from payments made to them in accordance with the provisions of Chapter-XVII of the Income-tax Act, 1961 (hereafter 'the Act') but has failed to deposit the same into the Government account leading to denial of credit of such deduction of tax to these taxpayers and consequent raising of demand.

2. As per Section 199 of the Act credit of Tax Deducted at Source is given to the person only if it is paid to the Central Government Account. However, as per 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 provisions 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.

3. This may be brought to the notice of all the assessing officers in your region so that if the facts of the case so justify, the assesseees are not put at any inconvenience on account of default of deposit of tax into the Government account by the deductor.

4. This issues with the approval of Chairperson, CBDT.

3. The assessee could not be fastened with the liability in respect of the TDS deducted but not credited by the employer to the account of the Central Government. The Ld. AR also placed reliance on the Office Memorandum issued by the CBDT dated 11/03/2016 to the same effect which reads as follows:-

F.No. 275/29/2014-IT (B)
Government of India
Ministry of Finance
Central Board of Direct Taxes
(CBDT)

New Delhi, Dated: 11th March, 2016

Office Memorandum

Sub: Non-deposit of tax deducted at source by the deductor- Recovery of demand against the deductee assessee.

Vide letter of even number dated 01.06.2015, 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 Income-tax Act, 1961 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.

2. However, instances have come to the notice of the Board that these directions are not being strictly followed by the field officers.

3. In view of the above, the Board hereby reiterates 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.

This issues with the approval of Member (Revenue & TPS).


(Sandeep Singh)
Under Secretary (Budget)
Ph: 2309 4182
Email: Sandeep.singh68@nic.in

All Principal Chief Commissioners/ Principal Directors General of Income Tax.
All Chief Commissioners/ Directors General of Income Tax.

Copy to:

1. Chairperson and all Members of CBDT.
2. All Joint Secretaries and Commissioners in CBDT.
3. Pr. DGIT (Systems) and Pr.DGIT (Admin.).
4. Additional Directors General (Recovery) and (PR, PP&OL).
5. Web Managers of irs.officersonline.gov.in and incometaxindia.gov.in for placing the Office Memorandum on the respective portal.
6. Office of Comptroller & Auditor General of India (30 copies).

4. It was further submission that in view of the provisions of section 205 of the Act also the assessee could not be fastened with the liability in respect of the TDS which has been deducted from salary but not credited by the employer to the account of the Central Government. The Ld. AR also placed reliance on the decision of the coordinate bench of this Tribunal Mumbai Bench in the case of Mr. Aditya Ramniwas Dhoot in ITA No.313/M/2025 dated 25.03.2025 as also the decision of Hon'ble Guwahati High Court in the case of Om Prakash Gattani, reported in the 117 taxman

549 (Guwahati). It was the submission that assessee may be granted the credit of the TDS deducted from the assessee's salary.

5. In reply, Ld. Sr. DR vehemently supported the orders of the AO and the JCIT(A).

6. We have considered the rival submissions. A perusal of the instruction of the CBDT, as also the Office Memorandum, extracted above, and the provisions of Section 205 of the Income Tax Act, clearly shows that once a TDS has been deducted from the salary of an employee, it is deemed that taxes to such extent of the TDS deducted has already been paid by the said employee. The said employee cannot be revisited with the said taxes which has already been deducted. This being so, the AO is directed to grant the assessee the benefit of the TDS which has been deducted from the salary of the employee.

7. Here, we would also like to draw the attention of the revenue wherein the Id. JCIT(A) has taken a stand that the decision of the coordinate bench of this tribunal as also the decision of Hon'ble High Court in this country is not binding on the revenue, insofar as it does not pertain to the jurisdiction of the assessee of the appellant. Judicial discipline requires, nay, demands that when a superior authority passes an order, however, difficult to peel it is to swallow, it incumbent on all subordinate authorities to follow such decisions. Failure to follow judicial discipline, would lead to miscarriage of justice. This is not what is expected from an appellate authority much less than judicial authority. Here, we may also mention that in view of the provision of Section 201 of the Act, the revenue is very much at liberty to recover the TDS so deducted by the said employer. The failure on the of

the part of the revenue to take appropriate action to recover the dues to it which has been collected on behalf of the revenue by a concerned cannot be treated as the failure on the part of the assessee to face a demand. This being so, respectfully following the decision of the coordinate bench of this Tribunal Mumbai bench, referred to supra, as also the decision of the Guwahati High Court the AO is directed to grant the assessee to benefit of the credit of the TDS as claimed by the assessee.

8. In the result, the appeal of the assessee stands allowed

Order dictated and pronounced in the open court on 24/11/2025.

Sd/-
(SANJAY AWASTHI)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता Kolkata; दिनांक Dated 24/11/2025

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Kolkata