

TDS credit to be allowed to Employee even if not deposited by the Employer

The Hon'ble Gujarat High Court in ***Kartik Vijaysinh Sonavane v. Deputy Commissioner of Income Tax [R/Special Civil Application No. 6193 of 2021 dated November 15, 2021]*** directed the Income-Tax Department ("**the Department**") to allow tax deducted at source ("**TDS**") credit to the assessee, even if the same is not deposited by the employer. Further held that, where tax has been deducted by an employer but not paid to the Central Government, the Department should resort to Section 201 of the Income-tax Act, 1961 ("**IT Act**") to recover TDS from the employer.

Facts:

Kartik Vijaysinh Sonavane ("**the Petitioner**") is a pilot with Kingfisher Airlines ("**the Employer**") that deducted TDS from the salary income of the Petitioner amounting to INR 7,20,100/- for the Assessment Year 2009-10 and INR 8,70,757/- for the Assessment Year 2011-12 respectively. However, the TDS amount had not been deposited by the Employer in the Central Government Account. Accordingly, the TDS credit as claimed by the Petitioner was denied by the Assessing Officer ("**the Respondent**" / "**AO**"). The Respondent raised demand vide several demand notices with interest and initiated recovery proceedings.

Being aggrieved, the Petitioner has filed this writ petition against recovery notices.

Issue:

Whether the Respondent can deny the benefit of TDS deducted by the Employer during the relevant financial years?

Held:

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 6193 of 2021 dated November 15, 2021*** held as under:

- Relied on its own decision in case of ***Devarsh Pravinbhai Patel v. Assistant Commissioner of Income Tax Circle 5(1)(1) [R/Special Civil Application No. 12965 of 2018 with R/Special Civil Application No. 12966 of 2018 dated September 24, 2018]*** wherein, the Court allowed the petition filed by the assessee, who was an employee of the Kingfisher Airlines and worked as a pilot and the TDS on the salary paid to the assessee had not been deposited, and the Department raised the tax demand with interest and initiated the actions of the recovery.
- Opined that, no separate reasoning are desirable as the facts being almost identical.

- Observed that, a perusal of Section 205 of the IT Act clarifies 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. Further, if the amount has been deducted but not paid to the Central Government, that eventuality is taken care of by Section 201 of the IT Act. It is not permissible to proceed against the assessee even after deduction of TDS.
- Held that, the Department is precluded from denying the benefit of the TDS by the employer during the relevant financial years to the Petitioner.
- Directed the Respondent to credit the tax to the Petitioner and in case of any recovery or adjustments, the Petitioner shall be entitled to a refund of the same along with the statutory interest, within 8 weeks.

(Author can be reached at info@a2ztaxcorp.com)

DISCLAIMER: The views expressed are strictly of the author and A2Z Taxcorp LLP. The contents of this article are solely for informational purpose and for the reader's personal non-commercial use. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon. Further, no portion of our article or newsletter should be used for any purpose(s) unless authorized in writing and we reserve a legal right for any infringement on usage of our article or newsletter without prior permission.