

## **No coercive action against payee if payer failed to deposit TDS collection with Govt.: HC**

**Summary – The High Court of Bombay in a recent case of Pushkar Prabhat Chandra Jain, (the Assessee) held that If payer, after deducting tax, fails to deposit it in Government revenue, measures can always be initiated against such payers once seller of property suffers TDS at hands of payer purchaser; seller could not again be asked to pay same again**

### **Facts**

- The petitioner, sold an immovable property for Rs. 9 crores. The purchasers made a net payment of Rs. 8 crores 91 lakhs to the petitioner after deducting tax at source at 1 per cent of the payment in terms of section 194-IA.
- The petitioner filed the return of income and claimed credit of TDS of Rs. 10.71 lakhs. The Income-tax department noticed that only an amount of Rs. 1.71 lakh was deposited with the Government revenue and, thus, gave the petitioner credit of TDS only to the extent of such sum.
- In an intimation issued by the respondent under section 143(1), a demand of Rs. 10.36 lakhs was raised against the petitioner. This comprised of the principal tax of Rs. 9 lakhs and interest payable thereon. Subsequently, the return of the petitioner was taken in limited scrutiny. During the pendency of such scrutiny assessment proceedings, the revenue issued the notice to the Branch Manager of bank attaching the bank account of the assessee. A total of Rs. 3.68 lakhs came to be withdrawn by the department from the petitioner's bank account for recovery of the unpaid demand.
- The assessee objected to attachment of bank account on grounds that the purchasers deducted the tax at source in terms of section 194IA. Further, the petitioner had already offered the entire sale consideration of Rs. 9 crores to tax in the return filed. The petitioner referred to section 205 and contended that in a situation like the present case, recovery could be made only against the deductor-payee. The petitioner could not be asked to pay the said amount again. However, the respondent did not accept the representation of the petitioner upon which the instant petition has been filed.
- On the assessee's appeal before the High Court:

### **Held**

- The purchasers paid the petitioner only Rs. 8 crores 91 lakhs retaining Rs. 9 lakhs towards TDS. The department does not argue that this amount of Rs. 9 lakhs so deducted is not in tune with the statutory requirements. It appears undisputed that the deductions did not deposit such amount in the Government revenue. Under the circumstances, the petitioner is asked to pay the said sum again, since the department has not recognized this TDS credit in favour of the petitioner.

- Section 205 carries the caption 'Bar against direct demand on assessee'. The section provides that where tax is deducted at the source under the provisions of Chapter XVII, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.
- The situation arising in the present petition is that the department does not contend that the petitioner did not suffer deduction of tax at source at the hands of payer, but contends that the same has not been deposited with the Government/revenue. As provided under section 205 and in circumstances of the instant case, the petitioner cannot be asked to pay the same again. It is always open for the department and in fact the Act contains sufficient provisions, to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers.
- The revenue is correct in pointing out that for long after issuing notice under section 266(3), the petitioner has not brought this fact to the notice of the revenue which led the revenue to make recoveries from the bank account of the petitioner. In that view of the matter, at the best the petitioner may not be entitled to claim interest on the amount to be refunded.
- Under the circumstances, the respondents should lift the bank account attachment. Further, the respondent should refund a sum of Rs. 3.68 lakhs to the assessee.