

# TAX FLASH NEWS

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## Employee will get credit of tax withheld even though employer has not deposited such tax with the government

Recently, the Gujarat High Court in the case of Kartik Vijaysinh Sonavane<sup>1</sup> (the taxpayer) dealt with the issue of eligibility for credit of taxes deducted but not deposited to the credit of central government by the employer. The High Court has held that the tax department cannot deny the benefit of tax deducted at source (TDS) to the employee, even though such tax has not been deposited to the credit of central government by the employer. The High Court directed that the credit of tax deducted should be given to the taxpayer employee and if in the interregnum any recovery or adjustment is made from the employee, the same is to be refunded along with interest.

### Facts of the case

The taxpayer is a pilot by profession and was an employee of Kingfisher Airlines. The Kingfisher Airlines deducted the tax to the tune of INR 0.72 million for the Assessment Year (AY) 2009-10 and INR 0.87 million for the AY 2011-12 in case of the taxpayer. However, the said amount was not deposited by the Airlines company in the central government account. Subsequently, while filing tax return, the taxpayer claimed the credit of the same amount. The tax department rejected the claim of the taxpayer and raised the demand of the said amount. The taxpayer filed a writ petition before the Gujarat High Court.

### High Court's decision

The High Court observed that the present case was covered by its own decision in the case of Devarsh Pravinbhai Patel<sup>2</sup> where also the taxpayer was an employee of the Kingfisher Airlines, worked as a pilot and TDS on the salary was not deposited by the airlines. Relying on the decision of the Bombay High

Court in the case of Om Prakash Gattani<sup>3</sup>, the Court had allowed the writ filed by the taxpayer and held that the tax department cannot deny the benefit of TDS by the employer of the taxpayer during the relevant financial years. Credit of such tax would be given to the taxpayer for the respective years. If there had been any recovery or adjustment out of the refunds of the later years, the same shall be returned to the taxpayer with statutory interest.

The Gauhati High Court in the case of Om Prakash Gattani<sup>4</sup>, while dealing with the non-deposit of TDS relating to prize money, observed as follows:

- The taxpayer was not supposed to do anything in the whole transaction except that he was to accept the payment of the reduced amount from which is tax was deducted at source.
- The responsibility to deposit the amount deducted at source as tax was of the person who was responsible to deduct the tax at source.
- On the amount being deducted, the taxpayer 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 taxpayer has no control over the matter.
- In case of default in making over the amount to the account of the central government, it was obviously the person responsible to deduct or the person who has made the deduction.

<sup>1</sup> Kartik Vijaysinh Sonavane v. DCIT (Special Civil Application No. 6193 of 2021) (Guj) – Taxsutra.com

<sup>2</sup> Devarsh Pravinbhai Patel v. ACIT (SCA No. 12965/2018 with SCA No. 12966/2018, dated 24 September 2018)

<sup>3</sup> ACIT v. Om Prakash Gattani [2000] 242 ITR 638 (Bom)

<sup>4</sup> Om Prakash Gattani v. ACIT [1996] 222 ITR 489 (Gau)

- Deductor is to that extent 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 the payment of 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.
- It is not that the tax department was helpless in the matter. Whatever process or coercive measures are permissible under the law would only be taken against such deductor and not the deductee.

In view of the above, the Gujarat High Court, directed that the credit of tax deducted should be given to the taxpayer employee and if in the interregnum any recovery or adjustment is made from the employee, the same is to be refunded along with interest within eight weeks from the date of receipt of this order.

### Our comments

Under the provisions of the Act, the payer is responsible to deduct tax on various payments and deposit the same with the government within the prescribed time limit. However, if the payer has not deposited such tax with the government then whether deductee will be eligible for credit on the tax withheld by the deductor. This issue has been a matter of debate before the Courts.

The Gauhati, the Bombay and the Gujarat High Court had held that the tax department cannot deny the benefit of TDS to the deductee even if the deductor has defaulted in deposit of such taxes to the government.

Similarly, the Bombay High Court in the case of Pushkar Prabhat Chandra Jain<sup>5</sup> observed that if payer, after deducting the tax, fails to deposit it with the government, measures can always be initiated against such payers.

The Gujarat High Court in the present case has held that the tax department cannot deny the benefit of TDS to the employee even though tax was not deposited to the credit of government by the employer.



<sup>5</sup> Pushkar Prabhat Chandra Jain v. UOI [2019] 103 taxmann.com 106 (Bom)

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