IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 16294 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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RAMSANGBHAI BANABHAI CHAUDHARY....Petitioner(s)

Versus

INCOME TAX OFFICER & 1....Respondent(s)

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Appearance:

MR PM LAKHANI, ADVOCATE and MRS R P LAKHANI, ADVOCATE for the Petitioner.

MR MEHUL S SHAH, ADVOCATE for the Respondent No. 2

MR SUDHIR M MEHTA, ADVOCATE for the Respondent No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 07/06/2016

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

The petitioner has prayed for a direction quashing recovery notices dated 13.2.2013, 6.1.2015 and 6.7.2015 issued by the respondent authority and for a further direction to give to the petitioner credit of tax deducted at source from his salary for the accounting year 2011-2012.

2. Brief facts are as under:

The petitioner, at the relevant time was working as Additional District and Sessions Judge, Rajkot. The salary income of the petitioner would be subject to deduction of tax at source. It is not in dispute that the District Court, while paying regular salary had also deducted such tax and deposited with the Revenue. The District Court, Rajkot also issued a certificate of such deduction of tax.

3. It appears that due to some technical snag in the computer system of the department, the entire component of the tax deducted at source in the case of the petitioner was not reflected. As a result of this, the respondent authority issued a demand of Rs.1,38,683/- on 13.6.2013 towards petitioner's outstanding tax dues. The petitioner resisted such recovery despite which subsequent recovery notices were also issued.

4. Having perused the documents on record with the

assistance of the learned counsel of the parties, we notice that undisputedly the tax was deducted from the petitioner's salary directly at source. Such tax so deducted was credited to the department by the District Court. However, out of total tax so deposited, the Revenue's system did not reflect the tax collection and deposit of a sum of Rs. 1,38,683/- in the form of section 26AS. It was on this account that the Assessing Officer did not grant benefit of such tax paid by the petitioner which resulted into a demand of tax which would presumably include interest.

5. Whatever be the reason, the petitioner cannot be asked to pay tax twice, particularly when it appears that on account of some technical defect, the correct figures not being reflected in the system of the Revenue, the petitioner cannot be made to suffer.

6. This Court in the judgment dated 23.6.2014 in Special Civil Application No. 2349 of 2014 in the same set of circumstances considered the issue as under:

> "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 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 no.16A have been produced by the assessee-deductee and consequently impugned demand notice issued under Section 221(1) of the Act cannot be sustained. 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 no. 16Ahave been produced.

11. In view of the above and for the reasons stated petition succeeds. It is held that the petitioner-assessee-deductee is entitled to credit of the tax deducted at source with respect to amount of TDS for which form no.16A issued by the employer-deductor-M/s. Amar Remedies Limited has been produced and consequently department is directed to give credit of tax deducted at source to the petitioner-assessee-deductee to the extent form no.16A issued by the deductor have been issued. Consequently, the impugned demand notice dated 6.1.2012(Annexure "D) is quashed and set aside. However, it is clarified and observed that if the department is of the opinion deductor has not deposited the said amount of tax deducted at source, it will always be open for the department to recover the same from the deductor. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs."

7. In the result, the petition is allowed. Demand notices dated 13.6.2013, 6.1.2015 and 6.7.2015 are quashed.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

VC DARJI