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* **IN THEHIGH COURTOF DELHIAT NEW DELHI**

% *Date of Decision: 30.04.2025*

\+ **<u>W.P.(C) 16978/2022</u>**

CONNER INSTITUTE OF HEALTH CARE AND RESEARCH CENTER PVT. LTD .....Petitioner

Through: Mr Mukesh Gupta and Mr S.B. Gandhi, Advocates.

versus

DCIT, CIRCLE- 73(1), DELHI .....Respondent

Through: Mr Ruchir Bhatia, senior standing counsel with Mr Anant Mann, Ms Aditi Sabharwal and Mr Abhishek Anand, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (***ORAL***)

1. The petitioner has filed the present petition impugning a notice dated 19.03.2021 [**impugned notice**] issued under Section 201 of the Income Tax Act, 1961 [**the Act**] in respect of financial year [**FY**] 2015-16.

2. The subject matter of the said notice indicates that it is for the verification under Section 201(1)/201(1A) of the Act and for furnishing details/information. It is the petitioner's contention that Section 201(1) of the Act does not contemplate any proceedings, which are akin to assessment

proceedings, for assessment of the obligation to deduct and deposit the tax at source [**TDS**]. In addition to the above, the petitioner also submits that there is no basis for initiating any proceedings for passing an order under Section 201(1) of the Act as there is no failure on the part of the petitioner to deduct and deposit the TDS.

3. At the outset, it is relevant to refer to Section 201 of the Act, which reads as under:

> "**201. Consequences of failure to deduct or pay**. —(1) Where any person, including the principal officer of a company, —
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> (a) who is required to deduct any sum in accordance with the provisions of this Act; or
>
> (b) referred to in sub-section (1A) of section 192, being an employer,
>
> does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:
>
> Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—
>
> (i) has furnished his return of income under section 139;
> (ii) has taken into account such sum for computing income in such return of income; and
> (iii) has paid the tax due on the income declared by him in such return of income,
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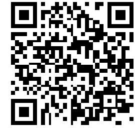
> and the person furnishes a certificate to this effect from an



accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of subsection (3) of section 200:

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

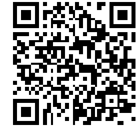
(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later.

(4) The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).

Explanation. —For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanation to sub-section (2) of section 288.

4. Section 201(1) of the Act, essentially, stipulates that a person including the principal officer of the company, who is obliged to deduct TDS does not do so or fails to deposit the tax after deducting the same, would be deemed to be an assessee in default in respect of such tax. Sub-section (3) of Section 201 of the Act stipulates that no order could be passed under sub-section (1), holding a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, after expiry of seven years for the end of the financial year in which the payment is made or the credit is given.

5. On the strength of sub-section (3) to Section 201 of the Act, Mr Bhatia, learned counsel appearing for the Revenue, contends that Section 201 of the Act does contemplate an inbuilt procedure for verification of the returns and for seeking information and details from an assessee regarding deduction in payment of tax at source. However, he does not dispute that a notice under Section 201(1) of the Act cannot be issued if there is no ground to believe that



there has been a failure on the part of the assessee to deduct and pay TDS. He contends that in the present case, the notice is not in exercise of any roving or fishing inquiry but was predicated on the assumption that the petitioner had deducted tax at a lower rate in respect of a certain assesse. He referred to the counter affidavit and drew the attention of this Court to the following statement made in the counter affidavit filed on behalf of the Revenue:

> "e) That the contents of the present paragraph are wrong and therefore, denied. On the contrary, it is stated that the petitioner has committed TDS default as per provisions of the Act for the Financial Year 2015-16 as highlighted by the Auditor of the Petitioner in its Audit Report in Form No. 3CD at column 34(a) wherein the Petitioner has been flagged for deduction of tax at less than the specified rate on payment of Rs 23,85,46,666 u/s 194J of the Act. It is stated that to verify the said defaults, proceedings u/s 201(1) were initiated by the Respondent vide the impugned notice dated 19.03.2021. Therefore, the contention of the Petitioner that there is no material with respondent to hold the Petitioner as defaulter in the fulfilment of the obligation to deduct tax at source is vehemently denied."

6. The learned counsel appearing for the petitioner submits that the petitioner had deducted tax at a lower rate as the payee had secured a certificate from the concerned Assessing Officer for deduction of tax at a lower rate. He has also drawn the attention to the petitioner's response to the averments made in the counter affidavit as set out above. The relevant extract of the petitioner's rejoinder affidavit, is reproduced below:

> "6. That the contents of para 3 (e) of the parawise reply of the counter affidavit are wrong and denied to the effect that the petitioner has committed TDS default as per provision of the Act for the financial year 2015-16 for deduction of tax

at less than the specified rate on payment of Rs.23,85,46,666/- u/s 194J of the Act. This payment was made to Sir Ganga Ram City Hospital and Sir Ganga Ram hospital has obtained an certificate for deduction of tax at lower rate to the extent of payment of Rs.25,98,90,000/- to the Sir Ganga Ram Hospital by the petitioner. The copy of certificate dated 08.05.2015 to this effect is attached herewith."

7. It is important to note that the averment that the petitioner had deducted tax at a lower rate in regard to payments made to Sir Ganga Ram Hospital pursuant to a certificate dated 08.05.2015 is not controverted. Thus, admittedly, there is no material on record to suspect that the petitioner had failed to deduct TDS or deposit the same with the Income Tax Authorities. The allegation on the basis of which the impugned notice is stated to have been issued, stands sufficiently addressed by the petitioner in its rejoinder affidavit.

8. In the given facts and circumstances of the case, we do not consider it necessary to examine the larger question whether any notice for the purpose of verifying the details regarding deduction of payment of TDS can be initiated.

9. It is clear in the present case that no proceedings under Section 201 of the Act are warranted in the case of the petitioner.

10. In view of the above, the present petition is allowed and the impugned notice is set aside.

11. The respondents are refrain from initiating any proceedings pursuant to the said notice.

12. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 30, 2025
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Click here to check corrigendum, if any