GAHC010088972023

2025:GAU-AS:5713

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2260/2023

DINENDRA BISWAS,
SON OF LATE DHIRENDRA NATH BISWAS,
RESIDENT OF HOUSE NO. 51, BYE LANE-3, SHAKTIGARH PATH,
BHANGAGARH, GUWAHATI, PIN- 781005 (ASSAM),
AND BY PROFESSION- FORMER JUDGE, HONOURABLE GAUHATI HIGH COURT, GUWAHATI.

....Petitioner

-VERSUS-

1.THE UNION OF INDIA ,
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NORTH BLOCK, NEW DELHI- 110001.

2:THE COMMISSIONER OF TAXES, ASSAM,
HAVING ITS OFFICE AT COMMISSIONER OF TAXES, ASSAM,
KAR BHAWAN, GUWAHATI- 781005.

3:THE DEPUTY COMMISSIONER OF INCOME TAX,
AAYKAR BHAWAN, CHRISTIAN BASTI,
G.S. ROAD, GUWAHATI- 781005.

4:THE ASSISTANT COMMISSIONER OF INCOME TAXES,
CIRCLE-I, GUWAHATI, AAYKAR BHAWAN, CHRISTIAN BASTI,
G.S. ROAD, GUWAHATI- 781005.

....Respondents

5:REGISTRAR GENERAL,
GAUHATI HIGH COURT,
M.G. ROAD, GUWAHATI, PIN- 781001.

6:SECRETARY THE HONOURABLE LOKAYUKTA, ASSAM,
15 SHAKTIGARH PATH, BYE LANE NO. 2, G.S. ROAD,
BHANGAGARH, GUWAHATI- 781005.

7:TREASURY OFFICER, KAMRUP(METRO) DISTRICT,
GOVERNMENT OF ASSAM,
GUWAHATI- 781001.

8:TREASURY OFFICER, DISPUR,
DISTRICT- KAMRUP(METRO),
GOVT. OF ASSAM,
GUWAHATI- 781006.

....Proforma Respondents

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. G.N. Sahewalla, Senior Advocate assisted by Ms. K. Bhattacharyya, Advocate.

For the Respondent(s) : Mr. S.C. Keyal, Standing Counsel, Income Tax Department.
: Mr. T.J. Mahanta, Senior Advocate/ Standing Counsel, Gauhati High Court assisted by Mr. A. Barua, Advocate for respondent No.5.
: Ms. S. Agarwal, Advocate for respondent No.6.

Date of Hearing : 08.05.2025.

Date of judgment : 08.05.2025.

JUDGMENT & ORDER (ORAL)

(Vijay Bishnoi, CJ)

Heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Ms. K. Bhattacharyya, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing Counsel, Income Tax Department; Mr. T.J. Mahanta, learned Senior Counsel/Standing Counsel, Gauhati High Court for respondent No.5 and Ms. S. Agarwal, learned counsel appearing for respondent No.6.

2. This writ petition is filed by the petitioner challenging the demand notices issued by the Income Tax Department under Section 143(1) of the Income Tax Act, 1961 (hereinafter to be referred to be "Income Tax Act") pertaining to different Financial Years starting from 2008-2009, 2010-2011, 2011-2012, 2012-2013 and 2013-2014, respectively, raising a demand for payment of taxes of Rs.8,40,370.00. The petitioner has also prayed to issue a direction to the respondent Income Tax Department to allow credit of the aforesaid amount in computing the income tax for the aforementioned financial years.

3. The brief facts of the case are that the petitioner had served as a Judge of the Gauhati High Court from October, 1997 to August, 2007, and thereafter had also worked as Upa-Lokayukta, Assam from 28.04.2010 to 31.08.2012. It is the precise case of the petitioner that during his tenure as a Judge of the Gauhati High Court and Upa-Lokayukta, Assam, advance Income Tax used to be deducted at source (TDS) by the respective employers for the Financial Years starting from 2008-09, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 from his salary/pay bills and were credited to the account of the respondent Income Tax Department.

4. It is claimed by the petitioner that the advance taxes deducted at source (TDS) were not reflected in Form 26AS (TDS/TRACES) due to inadvertence by the respective employers and as a consequence of which the respondent authorities did not allow credit of TDS (deducted at source) while computing the income tax of the petitioner for the above mentioned Financial Years and raised demands calling upon the petitioner to pay the said amount. The description of the demand notices issued by the Income Tax Department to

the petitioner is as follows:

Sl No.	*Financial Years*	*Demand Reference Number*	*Amount demanded*
1.	*2008-2009*	*No.201020091005444604 5T*	*Rs.1,35,550.00*
2.	*2010-2011*	*No.201220111000612281 4T*	*Rs.3,16,010.00*
3.	*2011-2012*	*No.201420123704411645 5T*	*Rs.2,72,680.00*
4.	*2012-2013*	*No.201320133702926715 5T*	*Rs.60,000.00*
5.	*2013-2014*	*No.201520143700538124 6T*	*Rs.56,130.00*
		Total :	***Rs.8,40,370.00***

5. The petitioner further contends that being aggrieved with the aforesaid demand for tax, he had furnished explanation to the respondent authorities along with Form 16AS and also furnished the Certificates of Deduction issued by the respective employers, i.e. Gauhati High Court and the Office of the Lokayukta, Assam with a prayer to the respondent Income Tax Department to allow credit of the said amounts and to adjust the same against the taxes paid for the respective Financial Years. However, the Income Tax Department did not allow credit of the aforesaid amounts but insisted for payment of the same again.

6. The petitioner has placed reliance on Section 205 of the Income Tax Act and has contended that as per the above provision, the Income Tax Department cannot raise demands as has been raised through the impugned demand notices and cannot refuse to credit the said amounts and to adjust the same against the taxes paid for the respective financial years. Along with the writ petition the petitioner has produced the documents in support of his claim

that the TDS so deducted by the respective employers for the aforementioned Financial Years which had also been duly deposited with the Income Tax Department.

7. The learned Single Judge of this Court, vide order dated 10.05.2023 passed in this writ petition, directed the counsel for the Gauhati High Court to produce proof of deposit of the TDS, keeping in view the certificate dated 18.11.2022 issued by the Registrar General, certifying that a sum of Rs.77,301/- had been deducted and deposited in the Central Government Account through the District Treasury Office by the Registry of the Gauhati High Court vide Government Bill No.1036 dated 26.03.2009, Kamrup (Metro) Treasury, Panbazar, on behalf of the petitioner on account of TDS from his arrear payment pertaining to the period 01.01.2006 to 31.08.2007.

8. Pursuant to the direction of the learned Single Judge, the then Registrar General of this Court has filed an affidavit dated 13.09.2023, wherein the proof of deposit of TDS is filed as Annexures 2 and 3.

The relevant para of the affidavit filed by the then Registrar General of this Court is reproduced hereunder:

> *"5. That the deponent begs to state that the writ petitioner joined as Judge of this Hon'ble Court in the month of October, 1997 and demitted Office of Judges of this Hon'ble Court in the month of August, 2007. Against the bill amount of Rs.2,57,670/- in respect of arrear pay and allowances w.e.f. 01/01/2006 to 26/03/2009, an amount of Rs.77,301/- was deducted as TDS which is clearly reflected from the statement of the Bill Registrar prepared by the Treasury Office, Assam."*

9. Affidavit-in-opposition dated 12.09.2023 is filed on behalf of the Registrar-cum-Secretary of the Lokayukta, Assam, wherein a categorical statement is made that TDS was deducted from the petitioner's salary and was

deposited in the Central Government Account through Dispur Treasury, Dispur, Guwahati, on behalf of the petitioner in respect of his tenure as Up-Lokayukta, Assam. Copy of the summary along with the tabular form showing deduction of TDS is also annexed along with the affidavit of the Registrar of the Lokayukta, Assam dated 12.09.2023.

The relevant para No.5 of the aforesaid affidavit is reproduced hereunder:

> *"5. That with regard to the statements made in paragraph 3 of the Writ Petition, the answering deponent begs to state that the petitioner herein was discharging his duties as Upa-Lokayukta, Assam for the financial year 2010-2011, 2011-2012, 2012-2013 and 2013-2014. That during his tenure as Upa-Lokayukta, Assam, T.D.S. was deducted from the petitioners salary and was deposited in the Central Government Account through Dispur Treasury, Dispur, Guwahati on behalf of the petitioner. In this regard it may be stated herein that in the office of the Upa-Lokayukta, Assam, a tabular form including bill number, date of bill, income tax deduction and treasury token numbers are prepared as a part of the Office Record. An amount of Rs.2,60,000.00, Rs.2,20,000.00, Rs.60,000.00 and Rs.56,133.00 were deducted from the account of the petitioner for the financial year 2010-2011, 2011-2012, 2012-2013 and 2013-2014 respectively."*

10. In response to the writ petition, affidavit-in-opposition dated 22.01.2025 has been filed on behalf of the Income Tax Department (respondent Nos.2, 3 and 4), wherein the specific stand of the Department is that the onus of deposition of income tax deducted at source lies with the employer and after the employer has deducted the income tax at the source, it has to be deposited against the respective PAN. It is further submitted that only thereafter, the TDS credit is available in the 26AS of the deductee. However, in the present case, it appears that the exercise of deduction of taxes due and subsequent deposition of the TDS has not been correctly done by the employer which resulted into creation of an outstanding demand against the petitioner. It is further contended

on behalf of the Income Tax Department that credit of only that amount can be given which is paid/deposited and reflected in 26AS, whereas in the present case, the petitioner has submitted Form 16 and TDS certificates but has failed to furnish any supporting documents which certify that the tax deducted has been deposited in the Central Government Account.

11. It is contended on behalf of the Income Tax Department that in relation to the tenure of the petitioner as a Judge of the Gauhati High Court and Upa Lokayukta, Assam, no advance tax deduction at source is available in the 26AS as no supporting evidence of tax deduction and simultaneous deposition/payment to Central Government is made available with the Department.

12. Having taken into consideration the rival pleadings of the parties, we are of the view that the action of the Income Tax Department of raising demand against the petitioner vide demand notices issued under Section 143(1) of the Income Tax Act pertaining to the different Financial Years starting from 2008-2009, 2010-2011, 2011-2012, 2012-2013 and 2013-14 is not sustainable and the action of the respondent Income Tax Department of not allowing credit of the demanded amount in computing the income tax of the petitioner for the aforesaid Financial Years is also unreasonable and cannot be sustained.

13. The law is well settled on this point. The responsibility to deposit the amount deducted at the source as tax is of the person who is responsible to deduct the tax at source. It is also the responsibility of the person who has deducted the tax at source to deposit the same with the Central Government. Where the tax is deducted and deposited, as per the provisions of the Income Tax Act, by the person who is responsible for deduction and deposition, the

assessee cannot be forced to pay the tax which has already been deducted and deposited. [See: *(i)* ***Assistant Commissioner of Income Tax Circle, Jorhat & Ors. Vs. Om Prakash Gattani*** *[**2000(1) GLT 294**]; (ii)* ***Pushkar Prabhat Chandra Jain Vs. Union of India & Anr.*** *[**(2019) 309 CurTR 2018 : (2019) 262 Taxman 118**], and (iii)* ***Incredible Unique Buildcon Private Limited Vs. Office of the Income Tax Officer Ward (12)(1) New Delhi*** *[**CM Appl. No.50728/2023 & Review Pet. No.26/2023 in WP(C) 7797/2023**, decided on **03.10.2023** by the High Court of Delhi]*

14. In the present case, from the affidavits filed on behalf of the respondent No.5 (Registrar General, Gauhati High Court) and respondent No.6 (Registrar-cum-Secretary to the Lokayukta, Assam), it is clear that the tax for the concerned financial years for which demand is raised against the petitioner by the Income Tax Department, has already been deducted and deposited as evident from Annexures filed along with the affidavits filed on behalf of the Registrar General, Gauhati High Court and the Registrar-cum-Secretary to the Lokayukta, Assam. Simply because the tax deducted at source by the Gauhati High Court and Lokayukta, Assam is not reflected in the Form 26AS, the respondent Income Tax Department cannot raise demand against the petitioner for the concerned Financial Years or cannot refuse to credit the tax already deducted in computing the income tax of the petitioner for the concerned Financial Years. The defect pointed out by the respondent Income Tax Department of non-reflection of tax deduction in Form 26AS by the employer can very well be cured by the Income Tax Department in consultation with the employers of the petitioner, i.e. Gauhati High Court and the Lokayukta, Assam.

15. In view of the above discussions, the writ petition filed by the petitioner is allowed. The demand notices, Annexure-II filed along with the writ

petition, are set aside and the respondents in the Income Tax Department are directed to allow credit of the amount demanded, vide aforesaid demand notices, in favour of the petitioner forthwith.

16. No order as to cost.

JUDGE **CHIEF JUSTICE**

Comparing Assistant