IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2063 OF 2025

Manohar Ramabtar Jhunjhunwala .. Petitioner

Versus

Principal Commissioner of Income Tax- 17,
Mumbai and Ors. .. Respondents

WITH
WRIT PETITION NO. 1480 OF 2025

Urmez Phiroz Mugaseth .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION NO. 1481 OF 2025

Cuzack Petrus Khursheed Banaji .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 20749 OF 2025

Ruchi Vipin Agarwal .. Petitioner

Versus

Asst. Director of Income Tax, Centralized
Processing Centre and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 20750 OF 2025

Ruchi Vipin Agarwal .. Petitioner

Versus

Asst. Director of Income Tax, Centralized Processing Centre and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 30175 OF 2025

Hardik Subhash Jani .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 30190 OF 2025

Wayne Edward Dcosta .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 30365 OF 2025

Xerxes Darius Kotval .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 30376 OF 2025

Parul Trivedi Nirmal .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 31169 OF 2025

Dharmveer Sachan .. Petitioner

Versus

Income Tax Assessing Officer, Ward 20(1), Thane and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 31258 OF 2025

Mudassarnazar Haroon Khan .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 31429 OF 2025

Vinit Ramsewak Yadav .. Petitioner

Versus

Income Tax Assessing Officer, Ward 32(2)(1) and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 31460 OF 2025

Ankit Krishnakumar Lakhotia .. Petitioner

Versus

Income Tax Officer,Ward 4(1), Thane and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 35206 OF 2025

Sikander Sharma @ Sikandar Sharma .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION (L) NO. 40158 OF 2025

Samreen Zaidi Koolarzadeh .. Petitioner

Versus

Income Tax Officer Ward- 23(1)(1) and Ors. .. Respondents

WITH
INTERIM APPLICATION (L) NO. 4622 OF 2026
IN
WRIT PETITION (L) NO. 40158 OF 2025

Samreen Zaidi Koolarzadeh .. Applicant

In the matter between

Samreen Zaidi Koolarzadeh .. Petitioner

Versus

Income Tax Officer Ward- 23(1)(1) and Ors. .. Respondents

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10325 OF 2023

Chandra Jammula Mohan .. Petitioner

Versus

Asstt. Director of Income Tax, Centralized Processing Centre and Ors. .. Respondents

WITH
WRIT PETITION NO. 8927 OF 2025

Sagar Roshanlal Agarwal .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION NO. 8929 OF 2025

Dhananjay Vinayak Wannere .. Petitioner

Versus

The Union of India and Ors. .. Respondents

WITH
WRIT PETITION NO. 13623 OF 2025

Tarun Singh Kanwar .. Petitioner

Versus

The Union of India and Ors. .. Respondents

Mr. J. D. Mistri, Senior Advocate, and Adv. Harsh Kothari*, appointed as Amicus Curiae.*

Mr. Dharan V. Gandhi*, for the Petitioner in WP/2063/2025.*

Mr. Ansh Agal*, i/b Jain Law Partners LLP, for the Petitioner in WP/1480/2025, WP/1481/2025, WPL/30175/2025, WPL/30190/2025, WPL/30365/2025, WPL/30376/2025, WPL/31258/2025, WPL/35206/2025, WP/8927/2025, WP/8929/2025 and WP/13623/2025.*

***Mr. Devendra Jain**, a/w Mr. Shashank A. Mehta, for the Petitioner in WPL/20749/2025, WPL/20750/2025 and WP/10325/2023.*

***Ms. Manini Bharati**, i/b Mr. Suyash M. More, for the Petitioner in WPL/31169/2025, WPL/31429/2025 and WPL/31460/2025.*

***Mr. Ravi Rattesar**, for the Respondents in WP/2063/2025, WP/1480/2025, WP/1481/2025, WPL/30175/2025, WPL/30190/2025, WPL/30376/2025, WPL/31258/2025, WPL/31429/2025 and WPL/35206/2025.*

***Mr. P.A. Narayanan**, for the Respondents in WPL/20749/2025 and WPL/20750/2025.*

***Ms Mamta Omle**, a/w Ms. Prajakta Vhatkar, for the Respondents in WPL/30365/2025 and WPL/40158/2025 with IAL/4622/2026.*

***Mr. Akhileshwar Sharma**, for the Respondents in WPL/31169/2025, WPL/31460/2025, WP/10325/2023, WP/8927/2025, WP/8929/2025 and WP/13623/2025.*

***Ms. Shreyanshi Srivastava**, for the Petitioner in WPL/40158/2025 with IAL/4622/2026.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: AUGUST 5, 2026

ORAL JUDGMENT: *(Per B.P. Colabawalla, J.)*

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. These petitions, heard together as a batch, raise a common grievance concerning Tax Deducted at Source (for short '**TDS**') under the provisions of the Income-tax Act, 1961 (for short '**IT Act**'), but not deposited by the deductor to the credit of the Central Government. The Petitioners before us are either salaried employees or Assessees whose receipts were subject to deduction of tax at source. According to the Petitioners, tax was in fact deducted from their income or payments, but since the deductors failed to deposit the same and/or failed to file proper TDS statements, the Income-tax Department (for short '**Department**') denied credit of such TDS and have raised demands against the Petitioners. The Petitioners have, therefore, approached this Court relying principally on Section 205 of the IT Act, and on a line of decisions of various High Courts, which have either held that TDS credit must be granted, even if the deductor has not paid over the amount, or at the very least that the Department cannot recover such tax once again from the deductee.

3. Since the batch involved recurring questions of considerable importance, and since certain decisions were pressed before us to indicate a supposed friction between Sections 199 and 205 of the IT Act, we considered it appropriate to hear the matters in some detail. To assist the Court, we requested Mr. J.D. Mistri, the learned Senior Advocate, to render assistance.

He graciously accepted our request. We have heard Mr. Mistri, the learned Senior Counsel, other Counsels appearing for the various Petitioners, and as also the learned standing Counsels appearing for the Department.

4. During the course of hearing, it became evident that the controversy has significance beyond the immediate parties. It affects a broad spectrum of taxpayers, including salaried employees, contractors, professionals, landlords, pensioners, and small Assessees whose taxes are collected through the vicarious machinery of deduction at source. The issues are also intertwined with the electronic compliance architecture under the IT Act, including Form 26AS, processing under Section 143(1), portal-based demand reflection, and automatic refund adjustments.

5. The lead petition being Writ Petition No. 2063 of 2025, the facts therein may be briefly noticed. The Petitioner therein was employed with Uniply Décor Limited. For Assessment Year 2019-20, he offered salary income and claimed credit of TDS deducted from such salary. His employer, however, did not deposit the TDS to the credit of the Central Government, as a result of which the same did not appear in Form 26AS. The return was processed under Section 143(1) without grant of full TDS credit, and a demand was raised. The Petitioner, thereafter, pursued revision proceedings under Section 264 of the IT Act, which came to be rejected.

6. For convenience, and because all the matters involve common legal issues, we propose to decide those issues comprehensively.

SUBMISSIONS ON BEHALF OF THE AMICUS CURIAE

7. Mr. Mistri, the learned Senior Advocate, submitted that deduction of tax at source is one of the statutorily recognized modes of collection and recovery of tax under Chapter XVII of the IT Act. He submitted that once tax is deducted from the income payable to the Assessee, the deductor acts as an agent of the State, and the deductee has neither possession nor control over the amount so withheld. It was argued that Section 190 makes clear that notwithstanding regular assessment in a later year, tax shall be payable *inter alia* by deduction at source in accordance with Chapter XVII. Section 191, according to him, envisages direct payment by the Assessee only where tax is not deducted in accordance with Chapter XVII, or where no deduction provision applies. Therefore, once tax has, in fact, been deducted, the deductee cannot be called upon to pay it again.

8. He further submitted that Section 205 contains an express bar against direct demand on the Assessee to the extent tax has been deducted from his income. The object of the provision, according to him, is to protect the deductee from the very situation with which this batch is concerned, namely, the deductor collecting tax but failing to remit it. He argued that the default of the deductor, who is the statutory collecting agent of the Revenue, cannot result in double prejudice to the deductee. The Department has ample machinery under the IT Act to proceed against the deductor, including Sections 200, 200A, 201, 221, 271C, 276B and allied provisions.

9. As regards Section 199, it was submitted that though the language speaks of tax "deducted" and "paid to the Central Government", the same must be read in context and harmoniously with the rest of the statutory scheme. Section 199, according to him, cannot be interpreted in a manner that destroys or weakens Section 205. A deductee who has offered the gross receipt to tax cannot be denied the corresponding TDS credit simply because the deductor defaulted. Such a construction, it was argued, would produce manifest injustice and allow the Revenue to achieve indirectly what Section 205 forbids directly.

10. Mr. Mistri has fairly pointed out the cleavage of judgments on the aspect of Sections 199 and 205 of various High Courts, including this Court. He has pointed out that some decisions have allowed credit of TDS despite non-deposit of the same with the Government, whereas some judgments have directed the Department to not recover the demand arising on account non-grant of credit of TDS. He also pointed out some decisions, where the distinction between Sections 199 and 205 have been blurred or not appreciated. These judgments have been dealt with later on in our analysis.

11. Mr. Mistri further emphasized the refund dimension. In many cases, an Assessee may be entitled to refund because his final liability is less than the amount deducted. If credit is denied, the refund is lost; further, if the demand continues on the portal, future refunds are adjusted; and the Assessee suffers civil consequences of an “outstanding demand” despite having already been deprived of the TDS amount. This, according to him, particularly hurts small taxpayers, salaried employees and retired persons.

12. Mr. Mistri carried his submission further by pointing out the reduced relevance of Form 16/16A in present times. He submitted that the only evidence to prove that tax is deducted at source was furnishing of a certificate in Form 16/16A by the deductor to the deductee, on the strength of which the deductee can claim credit of TDS. In earlier times, such certificates were issued manually and were required to be attached with the Return of Income. However, with the advent of technology, the entire mechanism has turned turtle, inasmuch as, the system now requires payment of TDS by the deductor, which will then enable the deductor to file statements online. It is only when the TDS statements are filed, the TDS certificates in Form 16/16A are generated online. In the absence of payment of TDS, neither the statement can be filed nor TDS certificates can be generated. Thus, if TDS is deducted but not paid, then the only evidence to show deduction in the form of Form 16/16A itself is not available. He, therefore, suggested that helplessness on the part of the Assessees to produce such evidence of deduction of tax at source should be taken into account by this Court and certain parameters may be laid down in this regard.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

13. The learned Counsel appearing for the various Petitioners more or less adopted the submissions of Mr. Mistri. In addition, it was specifically urged on behalf of the Petitioners that in the present batch there is no challenge laid by the Department to the foundational factual position that tax had, in fact, been deducted in the respective matters. There is no claim of fabricated or false deduction. According to learned counsel, once the Revenue has not disputed, in these writ proceedings, the fact that tax was deducted from the Petitioners' income or payments, the petitions ought to be allowed and the corresponding TDS credit ought to follow.

14. It was also pointed out that many Petitioners had contemporaneously written to the TDS officer, the Assessing Officer, or other departmental officers, bringing to their notice that tax had been deducted but not deposited. Yet, no meaningful corrective step was taken and the Department continued to keep the demand alive on the portal, often adjusting subsequent refunds. Further, such demands have to be deleted from the portal and mere marking of a demand as non-recoverable would not serve any purpose as the system is amenable to modification by the Assessing Officers and possibly the CPC, which will again entail the Petitioners having to knock on the doors of the Department in case such demands become alive and refunds start getting adjusted.

15. Insofar as the lead matter is concerned, the learned Counsel appearing for the Petitioners, apart from the broad legal challenge, submitted that the Petitioner had contemporaneously taken steps to bring the employer's default to the notice of the Department. The Petitioner addressed

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a letter dated 18.01.2020 to the Income-tax Officer (TDS), Circle 3(1), Chennai, being the jurisdictional TDS officer of the employer company, specifically pointing out that though tax had been deducted from his salary, the same had not been deposited and therefore was not appearing in Form 26AS. In the said communication, the Petitioner also stated that he had not received salary for certain months and had not been furnished the TDS certificate and expressly requested that action be taken against the company under the Act. Thus, this is not a case where the Petitioner remained passive or sought to raise the issue belatedly. The default was promptly brought to the notice of the Department at the earliest available point of time.

16. The Petitioner also pursued his claim against the employer in the corporate insolvency proceedings after the employer entered Corporate Insolvency Resolution Process (CIRP). The material on record shows that pursuant to the public announcement in the insolvency process, the Petitioner lodged a claim in Form D before the Interim Resolution Professional/Resolution Professional of Uniply Décor Limited. The claim was not confined merely to unpaid salary but also to the TDS amount, i.e., the gross salary amount. The same was not disputed by the Resolution Professional and importantly, the Resolution Professional, by communication dated 10.08.2022, informed the Petitioner that his claim

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stood admitted to the extent reflected in the books of account of the corporate debtor i.e., the net salary amount. The acceptance of the claim by the Resolution Professional of the net salary amount shows that tax was deducted at source, and only such net of TDS liability was recognised as relating to the employee, while the balance TDS amount was a liability to be paid to the Government. On the other hand, there is not an iota of evidence produced by the Revenue that it had raised any claim before the Resolution Professional in respect of the demands including the TDS demands payable by the said company. It was also contended that the reply affidavit is blissfully silent about the claim raised before the IRP. He, accordingly, submitted that complete credit of the TDS amount should be granted to the Petitioner. He also made submissions that unpaid salary cannot be brought to tax at all.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. Per contra, the learned Counsel for the Respondents relied substantially on the affidavit in reply filed in the lead matter and the submissions made across the bar. The broad stand was that under Section 199, read with Rule 37BA, credit for tax deducted at source can be granted only if the tax deducted is also paid to the Central Government and corresponding information is furnished by the deductor to the Income-tax authority. It was, therefore, contended that the statutory condition of payment to the Government cannot be diluted.

18. The Department's affidavit also referred to the CBDT Office Memorandum dated 14.01.2026, which reiterated the Board's stand that while Section 205 may bar direct recovery from the deductee, Section 199 and Rule 37BA require payment to the Government before credit can be granted. The Department, thus, sought to preserve a distinction between non-recovery and actual grant of credit.

19. The Revenue has fairly contended that as per Section 205 of the IT Act, demands to the extent of tax deducted at source but not deposited, cannot be recovered from the deductees. However, for the same to apply, the Assessee/deductees would have to prove to the satisfaction of the Assessing Officers that tax was actually deducted at source but not paid to the Government. It was submitted that there is no question of either granting credit of TDS or removing the demand from the Portal. The Department would, if the Officers are satisfied that the tax was deducted but not deposited with the Government Treasury, mark such demands as non-recoverable on the portal.

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20. In the lead matter, the affidavit in reply further asserted that the Petitioner had not produced reliable evidence to establish that TDS was actually deducted. It was stated that the material produced consisted only of unsigned or unauthenticated salary slips and that in the absence of authentic proof, the requirement of Section 205, namely that tax should have been "deducted from his income", was not satisfied. The Department also relied upon the absence of the Petitioner's name in the employer's Form 24Q statements.

21. The Department also emphasised that Section 200(3) and Rule 31A require the filing of periodic TDS statements and that the electronic ecosystem is built around statement-based matching. According to the Respondents, Form 26AS and deductor-filed statements remain the primary basis for grant of credit.

22. The learned Counsel for the Department strongly refuted any suggestions to modify the system and the current procedures, which are all pervasive. They assert that the processing of Return of Income on the basis of information available may not be tinkered with and say that if, in any situation, if any Assessee is aggrieved by the non-grant of credit of TDS while processing a Return of Income, then the remedy would be to approach the

Assessing Officer to get the same rectified. To buttress this contention, it was pointed out that there were instances in the past where certain fraudulent credits were claimed and allowed, resulting in loss to the exchequer.

23. In this regard, our attention was drawn to the Board's office memorandum dated 14.01.2026. In the said memorandum, the following was, *inter alia*, stated:

i. There is no bar in raising a demand against the deductee in the absence of payment of the TDS amount by the deductor to the Central Government, though, as per Section 205 such demand cannot be recovered;

ii. Refunds are not adjusted where the demand does not exceed Rs. 10 lakhs, and arise purely on account of a TDS mismatch;

iii. Due to fraudulent practices in the past, TDS credit was denied in case the same was not reflected in Form 26AS of the deductee and demands were raised. Such demands may appear as outstanding, though the Department may not enforce collection where the default lies at the end of deductor;

iv. Subsequent years' refunds, if any, gets adjusted against such demand, only if such demand exceeds Rs. 10,00,000/- and if the Assessee and JAO certify such demand to be not enforceable, because of TDS mismatch, then the refund is not adjusted;

24. The stand of the Department is emphatically made clear that credit of TDS would not be given where TDS is not paid to the Government, but the demand would not be collected if the demand does not exceed Rs. 10 lakhs. If the demand exceeds Rs. 10 lakhs, then the demand may be enforced unless the Assessee and JAO marks such demand as non-enforceable, due to TDS mismatch. In such cases, no refunds would be adjusted.

COURSE OF HEARING AND SUBSEQUENT DEVELOPMENT

25. During the course of hearing, the parties placed before us the decision of the Gujarat High Court in ***Gayatri Snehal Rao v. Income-tax Assessing Officer [2024] 168 taxmann.com 466 (Gujarat)***, and the subsequent order of the Hon'ble Supreme Court in ***Income-tax Assessing Officer, Baroda v. Shobhan Shantilal Doshi [2026] 182 taxmann.com 555 (SC)***. It was contended by the Petitioners that the Department is stated to have conceded the position that once TDS is deducted, then credit has to be granted whether such tax has been paid to the Government or not.

26. A specific reply was sought from the Revenue on the order in the case of *Shobhan (supra)*, particularly in the context of the existing administrative instructions of the CBDT which has been set out earlier. Another office memorandum dated 05.02.2026 was issued. In the said memorandum the comments of the Board on the earlier clarification vide office memorandum dated 14.01.2026 and on the decision in the case of *Shobhan (supra)*is reproduced as under:

> *"3. In view of above, I am directed to forward the following directions on behalf of CBDT:*
>
> *"Inputs already provided by CBDT may be modified by incorporating the favorable order of the Supreme Court in the in Civil Appeal No. 197 of 2026. Through this, it may be emphasized that Hon'ble Supreme Court has recognized and affirmed the requirement of risk management strategy in such cases. The order of Hon'ble Supreme Court emphasizes upon the existence of the possibility of misuse of TDS credits and the risk management strategy formulated by CBDT is also based upon the same. Hence the procedure laid down by CBDT for such cases may be considered a just, fair and reasonable process."*

27. If, according to the Department, the position stood altered or required modification after the judgment of the Hon'ble Supreme Court in *Shobhan*, it was incumbent upon the Board to issue a fresh or modified instruction clarifying the manner in which the earlier instruction and office memorandum were to operate in light of the said judgment. We asked the learned Counsel for the Revenue, if any revised or modified instructions are issued. There was no response to the same. Thus, admittedly, no revised instruction, clarification, or superseding circular has been placed on record till date.

POINTS FOR DETERMINATION

28. Considering the broad spectrum of arguments raised, and considering that the issues would have wide ramifications, more so on small taxpayers and salaried employees, we have decided to deal with the following issues in some detail so as to avoid future litigation:

i. Whether credit of TDS deducted but not paid by the deductor would be allowed under Section 199 of the IT Act, or should the Department be merely directed not to recover such demand in terms of Section 205 of the IT Act?

ii. What would constitute sufficient or satisfactory proof or evidence to demonstrate deduction of tax at source in the absence of Form 16 and Form 16A?

STATUTORY FRAMEWORK

29. Before dealing with these issues, it is necessary to notice the relevant provisions.

i. Section 190 provides that notwithstanding the fact that regular assessment is to be made in a later Assessment Year, tax on such income shall be payable by deduction at source, collection at source, or advance payment in accordance with Chapter XVII.

ii. Section 191 contemplates direct payment by the Assessee where no deduction provision applies, or where tax has not been deducted in accordance with Chapter XVII.

iii. Section 197 empowers the Assessing Officer to issue a certificate authorising deduction of tax at source at a lower rate or, where appropriate, at a nil rate, if the total income of the recipient justifies such reduced deduction. Once such a certificate is issued and furnished to the deductor, the deductor is bound to deduct tax in accordance with the certificate and not at the standard rate otherwise prescribed under the relevant TDS provision.

iv. Section 197A deals with cases where the payee can furnish a declaration to the payer for non-deduction of tax at source, subject to fulfilment of statutory conditions. Broadly, in certain categories of income, especially interest and specified receipts, if the recipient declares in the prescribed form that the tax on his estimated total income will be nil, the payer is not required to deduct tax at source. The provision is commonly invoked through forms such as Form 15G and Form 15H, subject to eligibility.

v. Section 198 provides that all sums deducted in accordance with the provisions of Chapter XVII shall, for the purpose of computing the income of an Assessee, be deemed to be income received. In other words, where tax is deducted at source from a payment, the deductee is treated as having received the gross amount, not merely the net amount actually handed over.

vi. Section 199, in material part, provides that any deduction made in accordance with the foregoing provisions of Chapter XVII and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income the deduction was made, and credit shall be given to him for the amount so deducted in the assessment for the relevant year. Sub-section (3) empowers the Board to make rules regarding giving such credit.

vii. Section 200 requires the deductor to pay within the prescribed time the sum so deducted to the credit of the Central Government.

viii. Section 200A provides for the processing of statements of tax deducted at source. It enables the Department to process the TDS statement filed by the deductor and make certain adjustments, such as the correction of arithmetical errors, incorrect claims apparent from the statement, computation of interest, fee, and determination of the amount payable or refundable.

ix. Section 201 deals with the consequences of failure to deduct or, after deduction, failure to pay tax. It provides that where any person who is required to deduct tax at source does not deduct, or after deducting fails to pay the same to the credit of the Central Government, such person shall be deemed to be an Assessee in default in respect of such tax, subject to certain exceptions. The provision, thus, fastens the primary statutory consequence on the deductor and not on the deductee.

x. Section 203 requires the person deducting tax at source to furnish to the deductee a certificate to the effect that tax has been deducted, specifying the prescribed particulars such as the amount deducted, rate of deduction and other relevant details. In salary cases, this is ordinarily Form 16; in many other cases, it is Form 16A.

xi. Section 205 provides that where tax is deductible at source under the foregoing 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.

30. These provisions show that deduction at source is a statutory mode of tax collection. The deductor acts under a vicarious statutory obligation, and once he withholds a part of the payee's income as tax, that amount passes out of the deductee's control by operation of law.

31. Some of the important TDS provisions and the nature of payments they deal with are brought out hereunder:

Section	**Nature of payment**
192	Salary
194A	Interest other than securities
194C	Contractors / sub-contractors

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194H	Commission / brokerage
194-I	Rent
194J	Professional / technical fees
194K	Certain unit income
194Q	Purchase of goods
195	Payments to non-residents
194-IA/194-IB/ 194-IC	Immovable property certain rent/JDAs
194B/194BB/ 194BA	Winnings
194D/194DA	Insurance-related

32. The dates for payment and related compliances are set out in the Rules. They broadly require the deductor to first deduct, then deposit through challan/book-entry within the prescribed due date, and thereafter file the prescribed statement. In salary cases, Form 24Q is required to be filed. In non-salary cases, the corresponding quarterly TDS statements are required to be filed in Forms 26Q, 26QF or 27Q as the case may be. Forms 16 and 16A are the certificates to be issued under Section 203 read with Rule 31 in some cases.

PAYMENT DATES AND RELATED COMPLIANCE

33. Under Section 200 read with Rule 30 of the Income-tax Rules, 1962, the tax deducted is required to be paid to the credit of the Central

Government within the prescribed timelines. Broadly speaking, for non-Government deductors, TDS deducted in a month is to be deposited by the 7th of the succeeding month, while for the month of March, the due date is ordinarily 30th April. Government deductors are governed by a separate book-entry and payment mechanics. Quarterly TDS statements are required to be filed under Section 200(3) read with Rule 31A, including Form 24Q for salary payments and the relevant quarterly forms for non-salary payments.

34. These timelines and compliances reinforce the fact that the obligation is the deductor's and not the deductee's. The deductee has no control over whether the deductor deposits the amount within time, files the correct statement, quotes the correct PAN, or uploads the correct particulars. <u>On the contrary, the claim of the deductee is completely dependent upon the compliance by the deductor.</u>

FORM 16 / FORM 16A AND TDS STATEMENTS

35. Under Section 203 read with Rule 31, the deductor is required to furnish a TDS certificate to the deductee. In salary cases, this is ordinarily in Form 16. In most other cases, it is Form 16A. Historically, these certificates served as the principal documentary evidence for proving deduction and claiming corresponding credit.

36. However, with the advent of the electronic TDS ecosystem, the compliance mechanism has materially changed. In the modern system, the deductor first deposits the tax, files the relevant TDS return/statement by entering the relevant challan details, and only thereafter the certificate is generated through the TRACES mechanism. As a result, where the deductor has not deposited the tax or not filed the statement, Form 16 or Form 16A often cannot be generated at all.

37. This change has a crucial consequence. If the Department were to insist rigidly on Form 16 or Form 16A as the only acceptable evidence of deduction, a deductee in the very category of cases before us would be left remediless. The absence of the certificate would not be because no deduction occurred but because the deductor defaulted in the later statutory steps of deposit and statement filing.

DECISION OF THE DELHI HIGH COURT IN COURT ON ITS OWN MOTION

38. One of the first decisions of a High Court to deal with the intricacies of TDS procedures is the decision by the Delhi High Court in ***Court on its Own Motion v. Commissioner of Income-tax [2013]***

352 ITR 273 (Delhi). It would be pertinent to notice the same in some detail. In the said case, the Delhi High Court was, *inter alia*, dealing with the problem arising from the mismatch and denial of TDS credit. The Court observed the issue as under:

> *"35. This brings us to the second issue regarding credit of TDS or rejection of credit even when the TDS stands paid by the deductor. The said problem can be divided into two categories; cases where the deductors fail to upload the correct and true particulars of the TDS, which has been deducted and paid as a result of which the assessee does not get credit of the tax paid, and the second set of cases where there is a mismatch between the details uploaded by the deductor and the details furnished by the assessee in the income tax return. The details of TDS credited/uploaded in the case of each assessee are now available in form 26 AS."*

39. On the plight of deductees denied credit due to the deductor's fault, the Court observed:

> *"49. The statement reflects the true and correct position of a pique assessee as a deductee, who has suffered tax deduction at source, but is not given due credit in spite of the fact that the deductor has paid the said tax. The respondents have received their due or money but credit is not given to the person from whose income tax has been deducted. Denying benefit of TDS to a taxpayer because of the fault of the deductor, which is not attributable to the deductee, causes unwarranted harassment and inconvenience. The deductee feels cheated. The Revenue cannot be a silence spectator, wash their hands and pretend helplessness. The problems highlighted here are normally faced by small or middle-class taxpayers, including senior citizens as they do not have Chartered Accountants or Advocates on their pay rolls. The marginal amount involved in several cases and inconvenience/harassment involved makes it unviable and futile exercise to first approach the deductor and then the Assessing Officer. Rectification and getting corrections made by the deductor and to get them uploaded is not an easy task. The second*

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phase of filing a revised return or an application under Section 154 is equally daunting and "expensive". Invariably the assessees will write letters or even visit the office of the deductors, but when there is no response or desired result, they get frustrated and suffer. This causes distrust and feeling that the assessee has not been treated justly, fairly and in an honest manner. In our earlier orders, we had emphasised this aspect and asked the Board to take appropriate steps to ameliorate and help the small taxpayers."

(emphasis supplied)

40. The Court then laid down the Department's duty in no uncertain terms:

"50. It is unfortunate that the Board did not take immediate steps after even noticing lacuna and waited till Finance Act, 2012, when Section 234E was enacted. Mere writing of a letter by the Assessing Officer to the deductor by no stretch can be treated as sufficient action on the part of the respondents. Even this, it appears, was done in a few cases as the respondents in the counter affidavit have stated that they have written 20119 communications to the tax deductors, where TDS credit claimed by the taxpayers did not match with the details loaded by the deductors. The Act empowers and authorises the Assessing Officer to verify the contents of the return and notices can be issued to a third party, i.e. the deductor, to furnish information and details. The deductor, the principal officer or person responsible for making deduction, once issued notice to appear, in most cases, would like to comply with the statutory requirements and also furnish details with regard to TDS deducted from the income of the assessee. The statutory powers given to the Assessing Officer are sufficient and should be resorted to and the assessee cannot be left to the mercy or the sweet will of the deductors. Therefore, we direct that when an assessee approaches the Assessing Officer with requisite details and particulars, the said Assessing Officer will verify whether or not the deductor has made payment of the TDS and if the payment has been made, credit of the same should be given to the assessee. These details or the TDS certificate should be starting point for the Assessing Officer to ascertain and verify the true and correct position. The Assessing Officer will be at liberty to get in touch with the TDS circle in case he requires clarification or confirmation. He is also at liberty to get in touch with deductor by issuing a notice and

compelling him to upload the correct particulars/details. The said exercise must be and should be undertaken by the Revenue, i.e. the Assessing Officer as an assessee who suffers in such cases is not due to his fault and can justifiably feel deceived and defrauded. We do not accept the stand of the Revenue that they can only write a letter to the deductor to persuade him to correct the uploaded entries or to upload the details. Power and authority of the Assessing Officer, cannot match and are not a substitute to the beseeching or imploring of an assessee to the deductor. The directions given above, are in accord with the provisions of the Act, namely, Section 133 and TDS provisions of the Act. If required and necessary, the income tax authorities can obtain prior approval from the Director or the Commissioner. The authorities can also examine whether general approval can be given. The said exercise is undertaken by the Assessing Officer while verifying or examining the return. Section 234E will also require similar verification by the Assessing Officer. In such cases, if required, order under Section 154 of the Act may also be passed. Circular No. 4 of 2012 will be equally applicable. This is the seventh mandamus which we have issued."

(emphasis supplied)

41. We respectfully agree with the above reasoning. Though the decision is in the context of tax deducted and paid by the deductors, but even in the present category of cases which concerns non-payment by the deductor rather than mere mismatch after payment, the logic would still remain the same, and we apply the same logic here as well.

ISSUE NO. (i) : SECTION 199 AND SECTION 205

42. The first issue concerns the relationship between Sections 199 and 205. The Department says that under Section 199, unless the tax deducted is paid to the Central Government, no credit can be granted. The

Petitioners say that Section 205 bars recovery and that the statutory scheme requires either a grant of credit or complete neutralisation of the demand.

43. In our view, the two provisions must be read harmoniously. Section 205 is a substantive protective provision. It is triggered once tax has been deducted from the Assessee's income. It does not say that the bar operates only after the deductor pays over the amount to the Government. Section 199, on the other hand, concerns the mechanics of tax accounting and attribution. If Section 199 is interpreted in isolation and rigidly, it would defeat Section 205 and permit the very mischief that Section 205 was enacted to avoid.

44. In one of the first decisions, this Court in ***Yashpal Sahni vs. Rekha Hajarnavis, Assistant Commissioner of Income-tax reported in [2007] 293 ITR 539 (Bombay)***, held that once it is established that tax has been deducted at source, the bar under Section 205 comes into operation, and it is wholly irrelevant whether the tax deducted at source has been paid to the credit of the Central Government or not and whether the TDS certificate in Form 16 has been issued or not. The Court further held that the Revenue must recover the amount from the deductor and not from the employee. Relevant findings of the Court are brought out hereunder:

> *"20. From the language of section 205, it is clear that once the tax is deducted at source, the same cannot be levied once again on the assessee who has suffered the deduction. Once it is established that the tax has been deducted at source from the salary of the employee, the bar under section 205 of the Act comes into operation and it is immaterial as to whether the tax deducted at source has been paid to the Central Government or not, because elaborate provisions are made under the Act for recovery of tax deducted at source from the person who has deducted such tax.*
>
> *21. In the present case, the petitioner-assessee has furnished monthly pay slips and bank statements to show that from his salary tax was deducted at source by the employer-respondent No. 6. Authenticity of the said pay slips and bank statements have not been disputed by the revenue. Thus, it is clear that the tax has been deducted at source by the respondent No. 6 from the salary paid to the petitioner. Therefore, the only question to be considered is, if the employer-respondent No. 6 has failed to deposit the tax deducted at source from the salary income of the petitioner to the credit of the Central Government, whether the revenue can recover the TDS amount with interest once again from the petitioner?*
>
> *22. In the present case, though the respondent No. 6 has deducted the tax at source from the salary income of the petitioner, the respondent No. 6 has not issued the TDS certificate in Form No. 16 to the petitioner. As a result, the petitioner is not entitled to avail credit of the tax deducted at source. However, once it is established that the tax has been deducted at source, the bar under section 205 of the Act comes into operation and the revenue is barred from recovering the TDS amount once again from the employee from whose income, TDS amount has been deducted. It is pertinent to note that the purpose of issuing TDS certificate under section 203 of the Act is to enable the assessee to avail credit of the tax deducted at source in the relevant assessment year. If the TDS certificate is not issued, then under section 199 of the Act, the assessee from whose income, tax has been deducted at source will not be entitled to take credit of the said amount. In*

that event, on account of the non-availability of the credit, the assessee would be liable to pay tax once again even though the tax was deducted at source. Thus, it would be a case of double taxation which is not permissible in law. To avoid such anomaly, section 205 has been enacted, to the effect that, once the tax is deducted at source by the employer-company, then, the person from whose income, the tax has been deducted at source shall not be called to pay the said tax again. From the language of section 205 of the Act, it is clear that the bar operates as soon as it is established that the tax has been deducted at source and it is wholly irrelevant as to whether the tax deducted at source is paid to the credit of the Central Government or not and whether TDS certificate in Form No. 16 has been issued or not. Also, the mere fact that the employer may not issue TDS certificate to the employee does not mean that the liability of the employer ceases. The liability to pay income-tax if deducted at source is upon the employer."

45. Much water has flown after the said judgment. We find that the following decisions have taken the view that TDS credit has to be given to the deductee under Section 199 of the IT Act once tax has been deducted, even if the deductor has not paid the tax to the Government :-

i. ***Sanjay Sudan v. ACIT [2023] 452 ITR 107 (Delhi)***
ii. ***BDR Finvest (P) Ltd. v. DCIT [2024] 161 taxmann.com 583 (Delhi)***
iii. ***PCIT v. Jasjit Singh (ITA 295/2023) (Delhi High Court)***
iv. ***Chintan Bindra v. DCIT [2024] 158 taxmann.com 27 (Delhi)***
v. ***Harshdip Singh Dhillon v. UOI (WP (C) no. 10828/2019) (Delhi High Court)***

vi. ***Bhanu Mohan Kaila v. UOI (WP (C) no. 6990/2022) (Delhi High Court)***

vii. ***Incredible Unique Buildcon (P.) Ltd. v. ITO [2023] 153 taxmann.com 179 (Delhi)***

viii. ***Sumit Devendra Rajani v. ACIT (2014) 369 ITR 673 (Guj)***

ix. ***Devarsh Pravinbhai Patel v. ACIT (Gujarat High Court) (SCA no. 12965 of 2018)***

x. ***Madhusmita Avinash Patnaik v. DCIT (2024) 168 taxmann.com 471 (Guj)***

xi. ***Rakesh Kumar Gupta v. UOI (2014) 365 ITR 143 (All)***

46. In the following decisions, a view was taken that tax cannot be recovered from the deductee even though the deductor has failed to pay the TDS to the Government in view of Section 205 of the IT Act :-

i. ***Naresh Govind Vaze v. ITO [2011] 16 taxmann.com 283 (Bombay)***

ii. ***Pushkar Prabhat Chandra Jain vs. Union of India [2019] 262 Taxman 118 (Bombay)***

iii. ***Neenad Ashok Kadam v. AO [2025] 302 Taxman 100 (Bombay)***

iv. ***Aslam Checkar v. ITO (WP (L) no. 2442 of 2024)(Bombay HC)***

v. ***Anusuya Alva v. DCIT [2005] 278 ITR 206 (Kar)***

vi. ***Rajkumar v. ACIT (Delhi High Court) (WP(C) no. 2490/2025)***

vii. ***Ashish Chopra v. ACIT (Delhi High Court) (WP(C) no. 12387/2025)***

viii. ***Ashok Kumar B Chowatia v. JCIT(TDS) (2021) 435 ITR 449 (Mad)***

47. In the following decisions, it was held that TDS credit be granted under Section 199 of the IT Act to the deductee, but refund of TDS be issued once tax is recovered from the deductor :-

i. ***Kartik Vijaysinh Sonavane v. DCIT [2022] 440 ITR 11 (Gujarat)***

ii. ***Milan Arvindbhai Patel v. ACIT [2023] 455 ITR 82 (Gujarat)***

iii. ***Malay Kar v. UOI [2025] 472 ITR 714 (Orissa)***

48. In the following decisions, it was held that TDS credit cannot be given under Section 199 of the IT Act in the absence of tax having been paid by the deductor to the Government :-

i. ***Assistant Commissioner of Income-tax v. Om Prakash Gattani [2000] 242 ITR 638 (Gauhati)***

ii. ***Mridul Raj Kunnon v. CIT [2025] 174 taxmann.com 164 (Kerala)***

49. Thus, it can be observed that there are divergent views of the Courts on the provisions of Sections 199 and 205 of the IT Act. However, the common thread running through all the decisions is that once tax is deducted, though not paid, the said amount cannot be recovered from the deductee. Consequently, there cannot be any question of adjustment of refund against such demand.

50. The practical consequences of keeping a demand alive on the IT portal are grave. Refunds of later years get adjusted. Interest continues to run. The Assessee suffers as though he were a defaulter. In such a case, saying that the Department will not "recover" directly is no answer. Perils of automation and technology are very well known. The demand must not merely be kept dormant; it must be removed or treated as not enforceable in a manner that does not prejudice the deductee. This will avoid unnecessary harassment to the deductees. If the demands are not to be recovered, then there is no point in keeping the same alive on the portal, which is susceptible

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to adjustment of refund of subsequent years for varied reasons not within the control of the Assessees. However, in view of the decision of the Hon'ble Supreme Court of India in *Shobhan (supra)*, the reliefs to be granted to the Assessees would require modification, and the same are discussed in the subsequent paragraphs.

THE *SHOBHAN* DECISION

51. During the course of hearing, the parties placed before us the decision of the Gujarat High Court in *Gayatri Snehal Rao (supra)* and the subsequent order of the Hon'ble Supreme Court in *Shobhan Shantilal Doshi (supra)*. The same, in our view, clearly answers the issue number (i) raised herein.

52. In *Gayatri Snehal Rao (supra)*, the Gujarat High Court quashed the very intimation which denied credit of TDS to the Petitioner's therein. Further, it gave certain directions to the Department to rectify their software/system in this regard. Relevant paragraph 10 is brought out hereunder:

> *"10. In view of the above facts, the impugned intimation issued under section 143(1) of the Act and consequential demand raised upon the petitioners are liable to be quashed and set aside. The respondents are hereby directed to see that strict compliance of*

the provision of section 205 of the Act as well as Instruction issued by the CBDT are followed and necessary corrections be made in the software so as to see that no demand is raised in case of the deductee on account of failure to deposit the amount of Tax Deducted at Source by the deductor. The Instruction issued by the CBDT under section 119 of the Act are binding upon all the officers of the department including the computer center which is now almost doing the job of the Assessing Officer. The technology used cannot be made to cause inconvenience to the tax payers contrary to the provisions of the Act and the Instruction issued by the CBDT resulting into helplessness on the human agency who has created the software resulting into the slavery of the technology. This is a classic case where the technology has failed to consider the provisions of the Act and the binding instructions of the CBDT. Therefore, we are of the opinion that necessary action be taken by the respondent-department so as to see that in future, no such inconvenience or harassment to the assessee is caused in breach of the provisions of the Act and the instructions issued by the CBDT. <u>The respondents are directed to comply with the aforesaid directions forthwith and pass necessary orders to rectify the software which creates mismatch between the Tax Deducted at Source and the tax not deposited by the deductor in case of deductee</u>. In no case there has to be a demand in case of a deductee for mismatch of the amount of Tax Deducted at Source not being found deposited by the deductor in view of the provision of section 205 which puts a bar on a direct demand in case of deductee."

(emphasis supplied)

53. The Revenue carried the matter to the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, no challenge was laid to the relief granted on merits, but the Department contended that the directions qua the amendments to the software be deleted. Moreover, the said order records the Department's concession that credit of TDS which has been deducted from the payments made to an Assessee shall be allowed, despite the fact that the amount may not have been paid to the Department by the person who deducted the TDS. The order of the Hon'ble Supreme Court in *Shobhan Shantilal Doshi (supra)* is a short order and, therefore, reproduced in its entirety :-

> *"1. Delay condoned.*
>
> *2. Leave granted.*
>
> *3. The only grievance raised by the appellants in the present appeal is regarding the directions given by the High Court in paragraph Nos.10 and 11 of the impugned order. While granting relief to the respondent on merits, direction has been issued to the Central Board of Direct Taxes to make changes in the software so that no demand is raised in future in similar cases.*
>
> *3.1 <u>Challenge has not been made to the relief granted to the respondent on merits</u>. Hence, we do not propose to issue notice to the respondent as the order, we propose to pass, will not affect the relief granted to the respondent.*
>
> *4. <u>Learned Additional Solicitor General appearing for the appellants submitted that unless the Assessing Officer comes to know about the facts of the case regarding deduction of Tax Deducted at Source (TDS) by the person paying the amount to the assessee, the liability cannot be waived of. It is only in case any TDS has been deducted from the payments made to an assessee that he gets credit, despite the fact that the amount may not have been paid to the Department by the person who deducted the TDS. For that, certain facts will always be required to be verified.</u> Any change in the software will not even point out the cases to the Assessing Officer where there may be a wrong claim made regarding deduction of tax. There can be other different factual situations, which may require manual examination after issuance of show cause notice to the assessee. Hence, change in the software may result in ignoring demands, which may be genuine. Technology are only meant for assistance and data processing, and not for adjudication of cases.*
>
> *5. As the aforesaid directions issued have nothing to do with the case on merits and will not affect the respondent-assessee, in our opinion, the present appeal can be disposed of with the observation that the direction issued by the High Court in*

> *paragraph Nos. 10 and 11 of the impugned order for changes to be made in the software are set aside.*
>
> *6. With the aforesaid clarification in the impugned order passed by the High Court, the present appeal is disposed of."*
>
> *(emphasis supplied)*

54. The Hon'ble Supreme Court's order is clear. The Gujarat High Court had set aside the intimation under Section 143(1) which had, in fact, denied the credit of TDS and raised a demand. The Gujarat High Court did not merely direct non-recovery of demand or removal of demand from the portal, but it, in fact, set aside the very intimation which had denied TDS credit to the Assessee therein. Such relief granted to the Assessee on merits was not challenged by the Department. The Hon'ble Supreme Court interfered only with the separate directions to amend the software. Further, it recorded the ASG's submission/concession that where TDS has in fact been deducted, the Assessee gets credit, though such TDS may not be deposited with the Government Treasury. The Department further stated that such a grant of credit would require certain verification, which in our view is a harmonious view of the provisions of Sections 199 and 205 of the IT Act.

55. Further, the Department has not shown to us that they have challenged any order of any High Court where the deductee was directed to be granted credit of TDS which was deducted but not paid, on the ground that the same is contrary to the express provisions of Section 199 read with Rule 37BA.

56. Further, as brought out earlier, the Revenue has failed to provide any comment on this aspect in the decision in *Shobhan (supra)*. A specific reply was sought from the Revenue. However, it merely stated that the instructions issued earlier would require modification in light of the said decision. However, there are no such revised administrative directions. Thus, the existing Board instructions continue to hold the field, but the same will have to be read consistently with the law declared by the Supreme Court in *Shobhan (supra)*.

57. We, therefore, hold that after *Shobhan (supra)*, the position on the principal issue, namely issue No. (i), stands considerably reinforced. In fact, the learned ASG appearing on behalf of the Revenue before the Hon'ble Supreme Court has stated that in cases where any TDS has been deducted from the payment made to an Assessee, then he must get credit for the same, despite the fact that the amount may not have been paid to the Revenue by the person who deducted the TDS. For ascertaining as to whether TDS has been deducted, the facts would always have to be verified. In these circumstances, and in light of the aforesaid statement, the Department cannot, once TDS is in fact deducted and verified, contend that the deductee is not entitled to credit of such TDS amount, and all the consequential reliefs have to follow. It goes without saying that the deductee cannot be burdened with the demand merely because the deductor has not paid the amount to the Government even though the same has been deducted from the amount payable to the Assessee.

58. In fact, we have been informed that pursuant to some decisions of the Delhi High Court, the Petitioners therein were granted credit of TDS. Naturally, the Petitioners herein cannot be treated differently.

59. This controversy can also be seen from another angle i.e., the maxim *"Lex non cogit ad impossibilia"* which means that the law does not compel the impossible. The entire mechanism of deduction and claim of credit has been elaborated earlier on. The same shows that once tax is deducted at source, the deductee is placed in a position of legal and practical impossibility. He has no control over the amount so withheld. The amount never reaches his hands. He cannot compel the deductor to deposit it except by making requests or pursuing separate proceedings. Further, filing of TDS statements and issuance of Form 16/16A are also beyond his control. Therefore, after deduction, performance of the remaining statutory steps lies entirely outside the deductee's power and control. To deny credit to the deductee, on the ground that the deductor failed to perform a duty which only the deductor could perform would amount to insisting upon an impossible condition from the deductee. The law does not compel a person to do that which he cannot possibly do. This aspect becomes even more evident when the present TDS system is examined. Under the electronic regime, the deductor must first deposit the TDS, then file the statement, and only thereafter does the system recognise the entry in Form 26AS and enable generation of Form 16 or Form 16A or other forms. If the deductor defaults at that stage, the deductee is rendered incapable of producing the very form which the system then expects him to rely upon. The deductee cannot force generation of Form 16 or Form 16A; he cannot alter Form 26AS; he cannot upload the deductor's statement; and he cannot cure the mismatch on his own. The law cannot place him in such a closed loop and then deny him credit for failure to satisfy conditions whose fulfilment has become impossible solely because of another person's default. Even by this logic, the credit of TDS deducted but not paid to the Central Government by the deductor, cannot be denied to the deductee once it is evident that tax was deducted at source.

60. For all these reasons, once actual deduction of tax at source is established on facts, credit must follow. At the highest, the Department may verify whether a deduction did in fact occur, but once that foundational fact is proved, the subsequent non-payment by the deductor cannot be used to defeat the deductee's entitlement. Any other view would make the deductee bear the consequences of an impossibility created by law itself and by the deductor's default, which the statute does not contemplate. On the other hand, an entire machinery is at the disposal of the Department to compel the deductor to make payment of the TDS amount which he has deducted, including an adjudication proceeding, recovery proceeding, penalty and thereafter prosecution proceedings.

61. Accordingly, we answer issue No. (i) by holding that where an Assessee is able to establish that tax was in fact deducted at source from his income or payment, the Department must grant appropriate TDS credit and cannot recover, directly or indirectly, the corresponding amount from the deductee. The consequential relief flowing from the grant of credit of TDS has to follow, including the grant of a refund, if any. In any event, demands raised solely on account of such non-payment by the deductor cannot survive and must be suitably rectified on the records and the portal of the IT Department.

ISSUE NO. (ii): PROOF OF DEDUCTION IN THE ABSENCE OF FORM 16 / FORM 16A

62. The second issue concerns proof. Under the earlier system, Form 16 or Form 16A issued by the deductor were often central proofs. Under the earlier system, a manually issued TDS certificate often constituted the most important proof of deduction. The deductor would deduct tax, deposit it, and furnish certificate in the prescribed form. The certificate was, therefore, central evidence.

63. The present electronic system, however, has changed this position. As noted above, the operational sequence is now: deduction, payment through challan, filing of return/statement, and generation of Form 16 / Form 16A through the electronic mechanism. In practical terms, without payment and/or statement filing, Form 16 or Form 16A cannot be generated at all. Manual Form 16/16A cannot be issued and even if issued has no evidentiary value. Therefore, insisting on these forms as the only proof would make relief impossible in precisely the category of cases that require relief.

64. Further, once a proper statement is filed and matched, the amount ordinarily reflects in Form 26AS or the relevant electronic record. To that extent, Form 16 and Form 16A have become less important as proof in ordinary compliant cases. Their real significance now arises in non-standard or disputed situations.

65. In fact, as rightly argued by the Petitioners herein, this highlights the reduced importance of Section 203, which requires the deductor to issue TDS certificates in Form 16/16A. If TDS is deducted and paid, TDS statements are filed, then the relevant amount of TDS gets reflected in Form 26AS of the deductee, in which case he would not require the help of Form 16/ 16A. Further, even if there is a mistake leading to a mismatch in amount or particulars of deductee *vis-à-vis* actual particulars, such a mistake will percolate into Form 16/16A as well, as Form 16/16A are generated based on TDS statements itself. On the contrary, when TDS is deducted and not paid, the deductor would not be able to file statements and generate Form 16/16A. In such a situation, the claim of the deductee of credit of TDS may not be denied solely because the Form 16/16A is not available, if otherwise it is established that TDS was in fact deducted and the deductor has defaulted in depositing the sum to the account of the Central Government.

66. We are, therefore, of the view that in a case where TDS credit is claimed though the amount is not reflected in Form 26AS and Form 16 / Form 16A is unavailable, the claim cannot be rejected solely on that basis.

The Assessee may establish a deduction by producing other reliable and cogent material. The evidence required will necessarily depend on the nature of the payment.

67. Suggestions have come from the parties in this regard during the course of the hearing. Based on the suggestions received, we broadly indicate the following as satisfactory categories of evidence, though the list is illustrative and not exhaustive.

68. In salary cases, where Form 16 may not be available, the following illustrations may constitute satisfactory evidence, singly or cumulatively:

i. salary slips showing gross salary, tax deductions and net salary. The salary slips are now a days computer generated and need not contain signature and therefore, the same may not be considered as the sole reason to reject the slips;

ii. appointment / offer letter or employment contract showing salary structure, together with bank statement showing receipt of the corresponding net amount;

iii. employer's payroll workings of the concerned employee, year-end tax workings by the employer of the concerned employee, email communications, internal cost-to-company break-up, and any tax computation sheet generated by the employer and shared with the employee;

iv. communications, if any, by the employee to the employer pointing out that tax has been deducted but not deposited or that Form 16 has not been issued or incorrectly issued.

69. In contractor / professional fee / rent cases or other similar cases, the following may constitute satisfactory evidence:

i. invoice or fee memo showing gross claim and bank statement showing receipt of net amount, and justifying the difference being TDS thereon with the difference approximating being the TDS amount at the TDS rate prescribed;

ii. payment intimation or remittance advice issued by the client;

iii. ledger accounts maintained by client or deductee showing gross amount, TDS, and net payment;

iv. confirmation from payer, if any;

v. contemporaneous correspondence, if any, demanding a TDS certificate or deposit of TDS.

70. In interest / dividend / similar receipt cases, the following may constitute satisfactory evidence:

i. interest advice, dividend advice, payment warrant, or other similar intimation;

ii. payer's confirmation;

iii. ledger account of the payee showing net receipt after withholding of TDS.

71. Common corroborative evidence across all categories may include:

i. communications by the deductee to the deductor regarding TDS deduction and default;

ii. communications by the deductee to the Department/TDS officer/ Assessing Officer bringing to their notice the deduction but non-payment to the Government;

iii. claims made in insolvency or liquidation proceedings;

iv. any admission by deductor in books, correspondence, affidavit, balance sheet note, or proceedings.

72. The absence of direct evidence from the deductor cannot be the sole basis to reject the claim. There may be several reasons why no direct document from the deductor is available including hostility, closure of business, insolvency, disappearance of management, or deliberate non-cooperation, and the Department may consider the same on a case-to-case basis.

73. Once such a claim is made and *prima facie* material is produced, it becomes incumbent on the Department to satisfy itself regarding the claim. The Department may also consider making an inquiry with the deductor/ TDS officer having jurisdiction over the deductor/ with the Resolution Professional/ Liquidator. It is not disputed that the Department has ample power to issue summons or notices to the directors or principal officers and get relevant information in this regard. If default is established, the Department must take action against the deductor for recovery of revenue loss, in accordance with law.

74. Therefore, while Form 16 / Form 16A may still remain valid evidence where available, they cannot be treated as the only mode of proving deduction in cases of deductor's default. The law must cater to the realities of the present system.

ADMINISTRATIVE DIRECTIONS

75. We also find substance in the grievance of the Petitioners that even after making an application for grant of TDS credit, the portal continues to show the demand, and refunds of subsequent years are adjusted. Further, the Officers, before whom such grievances are registered, do not act promptly.

76. Accordingly, we direct that where an Assessee claims TDS credit on the basis that tax was deducted but not reflected in Form 26AS due to the deductor's default and furnishes *prima facie* supporting material, the jurisdictional Assessing Officer shall:

i. register and acknowledge the application;

ii. keep the corresponding demand in abeyance pending disposal of the claim as per the provisions of Section 205;

iii. mark the demand appropriately in the system as stayed / not recoverable / kept in abeyance so that no coercive recovery or refund adjustment takes place, as per provision of Section 205;

iv. undertake factual verification in the manner indicated above;

v. pass a reasoned order, as expeditiously as possible and preferably within six months from receipt of the application;

vi. in the event the Assessee is not satisfied with the orders passed by the Department then the Assessee shall be free to pursue all remedies available to him as per law.

77. We clarify that the initial denial of credit in a Section 143(1) intimation may occur mechanically on account of the current statement-driven processing architecture. But once an application supported by *prima facie* material is received, the Department must move beyond the mechanical mismatch and adjudicate the matter in accordance with law and in light of the directions issued in this judgment.

CONCLUSION

78. For the reasons aforesaid, we hold as follows :-

i. First, where tax has in fact been deducted at source from the income or payment of an assessee, the Department cannot deny the deductee the credit thereof merely because the deductor failed to deposit the amount to the credit of the Central Government. Upon verification, as set out earlier, appropriate TDS credit must be granted, and the corresponding demand cannot be enforced or continued against the deductee.

ii. Secondly, in the absence of Form 16 or Form 16A or similar other forms, deduction may be established by other cogent material such as salary slips, bank statements, payment advices, ledgers, invoices, rent records, correspondence, insolvency claims and other surrounding evidence; absence of the formal certificate in Form 16 or 16A, by itself shall not be fatal.

iii. The Department is directed to follow the directions which we have given earlier in respect of dealing with an application received for grant of credit of TDS where tax is deducted at source but not paid, where credit is denied while processing the Return of Income.

79. In the present batch of matters, we set aside the orders/intimation to the extent it raises a demand on account of TDS deducted but not paid to the Government and remand it back to the respective Assessing Officers for fresh consideration. Though there is no evidence brought on record or any allegations raised that the claims of the Petitioners are not valid, however, in the interest of justice, we direct the Petitioners to produce the record before the respective jurisdictional Assessing Officers so as to satisfy them about the deduction of TDS amount.

80. In light of the same, we allow the present Petitions and direct the Respondents to verify the claims raised, grant credit of TDS as claimed including the issue of refund, if any, and make appropriate rectification/ correction/ deletion if any, of the demands appearing against them, in accordance with law, after due verification.

81. Since we have decided the Petitions on the principal common issues, all other contentions on merits in the individual petitions are expressly kept open for the parties to agitate, should the need arise.

82. It is clarified that this order pertains to domestic transactions and does not cover any international transaction which we have not examined in this set of Petitions.

83. Rule is made absolute in the aforesaid terms and the Writ Petitions are also disposed of in terms thereof. However, there shall be no order as to costs.

84. In light of the disposal of the Writ Petitions, nothing survives in Interim Application (L) No. 4622 of 2026, and the same is also disposed of accordingly.

85. We must record our gratitude and appreciation to Mr. Mistri as well as Mr. Kothari who were appointed as *Amicus Curiae* in the present matter and have taken time out from their busy schedule to provide valuable assistance to the Court.

86. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Darshan Patil