

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 173 of 2019

OA No. 116 of 2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

- OA 116/2019 Narendra Kumar Singh, aged about 56 years, S/o Late Jadunath Singh, R/o At-Quarter No. Tupe II/33, Census Staff Quarters, Baramunda, Bhubaneswar, Pin-751003, presently working as Statistical Investigator Grade II, O/o Directorate of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751022.
- OA 173/2019 Bijay Kumar Sahu, aged about 52 years, S/o Arikhita Sahu, Vill-Bada Saragailo, PO-Teisipur, dist-Puri, working as SI Grade-II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.
- OA 175/2019 Upendra Kumar Naik, aged about 52 years, S/o Ghana-shyam Nayak, Vill-Kalyanpur, PO-Bhinpur, dist-Jajpur, working as SI Grade-II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.
- OA 185/2019 Sudarshan Behera, aged about 59 years, S/o late Laxmidhar Behera, Vill/PO-Rahania, Dist-Bhadrak, working as SI Grade-II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.
- OA 186/2019 Mohan Chandra Purudhul, aged about 52 years, S/o Mansingh Purudhul, Vill/PO-Anua, PS-Moaroda, Dist.-Mayurbhanj-757018, working as SI Grade-II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.
- OA 187/2019 Giridhari Samantaray, aged about 59 years, S/o Late Kashinath Barik, Vill/PO-Khandasahi, Dist-Cuttack, working as SI Grade-II, O/o Director of Census Operation, Bhoinagar, Unit-IX, Bhubaneswar-751007.

.....Applicants.

VERSUS

Respondents in OA Nos.173/2019, 175/2019, 185/2019, 186/2019, 187/2019

1. Union of India, represented through its Secretary to Govt. of India, Ministry of Home Affairs, North Block, New Delhi-110001.
2. Registrar General of India, Ministry of Home Affairs, 2/A Mansingh Road, New Delhi-110011.
3. Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751002.
4. Deputy Director, O/o Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751022.

5. The Deputy Director (CRA), O/o Principal Director of Audit (Central), Hyderabad, Branch Office, Orissa, Bhubaneswar, A.G.Office Complex, Bhubaneswar-751001.

Respondents in OA No. 116/2019

1. Union of India, represented through its Secretary to Govt. of India, Ministry of Home Affairs, North Block, New Delhi-110001.
2. Registrar General of India, Ministry of Home Affairs, 2/A Mansingh Road, New Delhi-110011.
3. Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751002.
4. Deputy Director, O/o Director of Census Operations, Odisha, Janpath, Unit-IX, Bhoinagar, Bhubaneswar-751022.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel (OA 173/2019, 175/2019, 185/2019, 186/2019 and 187/2019)
Mr.C.P.Sahani, counsel (OA 116/2019)

For the respondents: Mr.C.M.Singh, counsel (OA 173/2019 & 185/2019)
Mr.R.K.Kanungo, counsel (OA 175/2019)
Mr.B.Swain, counsel (OA 186/2019)
Mr.A.Pradhan, counsel (OA 186/2019)
Mr.P.R.J.Dash, counsel (OA 116/2019)

Heard & reserved on : 23.7.2019

Order on : 4.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

These six OAs arise out of a common dispute between the respondents and the applicants in all these OAs, for which, the OAs were heard together and are being disposed of by this common order. The reliefs sought for in all these OAs are identical except for some minor differences in OA No. 116/19. The reliefs in the OA No. 116/19 are as under:-

- “(i) Admit the Original Application, and
- (ii) After hearing the counsels for the parties be further pleased to quash the impugned order vide File No. 115/2/2018-Accts/89 dated 29.1.2019 at Annexure A/2 and direct the departmental respondents to refund the recovered amount with interest.
And/or
- (iii) Pass any other order(s) as the Hon'ble Tribunal deem just and proper in the interest of justice considering the facts and circumstances of the case and allow this OA with costs.”

2. The common reliefs sought for in OA Nos. 173/2019, 175/2019, 185/2019, OA 186/2019 and 187/2019 are as under:-

- “(i) To quash the order dt. 29.1.2019 under Annexure A/4, the applicant is concerned;

- (ii) To declare the action of the respondents in the matter of effected recovery the arrear from January, 2019 of Rs.20,000/- which is against the law and rules and direct to refund the recovery amount to the applicant immediately with interest.
- (iii) To pass any other order(s) as deem fit and proper.

As would be seen, all these OAs are directed against the impugned order dated 29.1.2019 of the respondent no. 4, copy of which is enclosed in Annexure-A/2 in OA No. 116/19 and in Annexure-A/4 in all other OAs. Considering the grounds advanced in these OAs, we will consider the OA No. 173/19 and OA No. 116/19 for the purpose of this order, which will apply to other OAs as well.

3. Facts common to all the OAs are that the applicants, who are the employees under the respondents, received the order dated 29.1.2019 stating as under:-

"Sub: Objection of CAG Audit regarding Short deduction of Income Tax at source on payment of arrear salary.

Sir,

I am directed to inform you that as per CAG Audit objection vide IR No. 79/2018-19/1047 dated 4.1.2019 para 3 regarding short deduction of Income Tax at source³ for FY 2015-16 this office has allowed relief on payment of arrear salary under Section 89(1) in spite of non-submission of duly filled in 10E form by the employee concerned.

It is therefore informed you that steps are being taken to recover the relief amount allowed during FY 2015-16 from the respective persons as the concerned persons have not submitted duly filled in 10E form."

The order was issued in the background of the Audit observation that there was short deduction of income tax payable by the applicants from their salary for the year 2015-16 under tax deduction at source (in short TDS) due to non-submission of the Form 10(E) by them in respect of the relief availed under section 89(1) of the Income Tax Act, 1961 (in short 'IT Act').

4. On receipt of the order dated 29.1.2019, the applicant in the OA No. 173/19 submitted the following representation dated 30.1.2019 (A/5):-

"As per letter under reference I beg to inform you that after receiving Demand Notice from CPC of IT deptt., I filed form 10E duly filled in through online for rectification on dated 30.5.2018, which was acknowledged and rectified by the department without any query (Xerox copy of filled in 10E enclosed.)

Therefore, I request you to consider the matter and take steps not to recover the relief amount allowed during FY 2015-15 from my salary and obliged."

5. The applicant in OA No. 116/19 submitted his representation dated 8.2.2019 (A/3) in reply to the order dated 29.1.2019, stating as under:-

"That Sir, the return submitted for FY 2015-16 pertaining to Assessment year 2016-17 has already been assessed by the Dept. of I.T by end of 31.3.2017 and no objection with demand note has been served on me to this effect. When the matter has already been settled by the I.T.Deptt., the Deputy Director namely D.Mishra who is not the DDO or competent authority unauthorisedly recovered Rs.20,000/- reducing my home take pay to Rs.2516/- only. In this situated circumstances I find no other go than to approach your august office and excellence to take appropriate action in the matter to refund RS.20,000/- at earliest to meet the livelihood of my family."

6. The applicants of other OAs have submitted similar representations to the respondents with similar request not to deduct the income tax which has already been paid by them for the financial year 2015-16 and the returns under the IT Act have also been filed. They are aggrieved by the fact that in spite of their representations informing the respondents that their income tax matter for the financial year 2015-16 has already been sorted out by them, but the respondents started deduction at the rate of Rs. 20,000/- from the applicant's salary for the month of January and then for the month of February. Then they filed the OAs and vide order dated 15.3.2019, this Tribunal directed the respondents not to recover any further amount on this account from the salary of the applicants.

OA No. 173/2019 and OA No. 116/2019

7. The grounds advanced in the OA No. 173/19 are that the impugned order is illegal and not sustainable under law since the representation of the applicant that he has already filed the returns for the year in question and has sorted out the issue relating to submission of the Form 10(E) with the tax authorities, was not considered by the respondents and no opportunity of hearing was allowed to the applicant before effecting the recovery from his salary and that the said order also fails the test of the principles of judiciousness and impartiality. It is also stated that there is violation of the principles of natural justice in this case. It is also stated that the action of the respondent no. 4 was illegal since as per the judgment of Hon'ble Apex Court in the case of State of Punjab vs. Rafiq Masih (white washer) and others (2015) 4 SCC 334, no recovery from the applicant can be undertaken.

8. The respondents have filed their Counter in OA No. 173/19, stating that the Audit pointed out the short deduction of income tax from the applicant since he had not submitted the Form 10(E). It is also stated that under the section 192 of the IT Act, the respondents are bound to deduct the income tax payable by the applicant from the salary paid to him and in this case as pointed out by the audit, there was short deduction of tax under TDS by the respondents vide the letter dated 28.1.2019 of the Audit (Annexure-R/2 of the Counter). In para 11 of the Counter it is stated as under:-

"In meanwhile the respondents are in receipt of letter No.CRA/CEA/IR No.79/2018-19/263 dated 30.5.2019 of the O/o Principal Director of Audit (Central), Hyderabad which has considered para 3 of IR No. 79/2018-19 as settled on account of the submission of copy of the Form No. 10E by applicant (Annexure R/7). Therefore the amount recovered from the applicant has been considered to be reflected in Form 16 for the Fy 2018-19 (Annexure r/8), which may be claimed for refund by the applicant from the Department of Income Tax while submitting IT return for FY 2018-19 as the already Income Tax data uploaded accordingly."

In the Counter filed in OA No. 116/19, the same para 11 as the Counter in OA No. 173/19 as extracted above, has been mentioned.

9. In the OA No. 116/19, the grounds advanced by the applicant are that no opportunity of hearing was allowed and any recovery towards short payment of income tax was within the purview of the tax authorities and there is no provision under which the respondents can recover the arrear income tax from the current salary. It is also stated in the OA that the impugned deduction had affected the livelihood of the applicant. Learned counsel for the respondents on OA No. 116/19 has also submitted the written notes on similar line by stating as under:-

"That in the meantime, the respondents have received a letter No.CRA/CEA/IR No. 79/2018-19/263 dated 30.5.2019 of the Office of Principal Director of Audit (Central), Hyderabad which has considered para-3 of IR No. 79/2018-19 No. 10E vide Annexure R/7 to the counter and thereafter, the amount recovered from the applicant has been considered to be reflected in Form 16 for the FY 2018-19 (Annexure R/8 to the counter) which may be claimed by the applicant from the Department of Income Tax while submitting IT return for the Financial Year 2018-19."

10. Learned counsels for both the sides were heard. Learned counsel for the respondents has also filed written notes of submissions justifying the recovery by stating the following in para 8 of the written notes as under:-

"Section 192 (1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the [rates in force] for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

So by virtue of the said provision, the applicant should have furnished the 'Form No-10 E' to the employer/resp. at the time of claiming relief U/s. 89(1), who is responsible for deducting tax at source. Hence it is a matter confined to employer and employee. Had it been furnished by the applicant before the employer/resp at the time of claiming relief U/s. 89(1), the recovery could have been avoided. But the applicant didn't furnish the said form before the authority/DDO at the time of claiming relief. So by wanting of such statutory form 10-E the DDO had no other option left to him other than to recover such amount from the applicant, otherwise the tax in question would have been recovered from the concerned DDO."

11. As stated in the Counter as well as the written notes of the respondents, the Audit observations based on which the respondents were in a hurry to deduct the amount from the salary of the applicants even without considering the representations that the applicants have sorted out the matter

with the tax authorities by filing the required Form 10(E), have been dropped after submission of the copy of the Form 10(E) to the Audit. It is clear that the deduction by the respondents from as per the impugned order dated 29.1.2019 on the basis of the Audit observations was incorrect. What was required that after obtaining the applicant's reply in the matter, the copy of the Form 10(E) was to be sent to Audit for settling the objection.

12. Learned counsels for the respondents have argued forcefully in the case stating that the authorities had no option but to deduct the amount from the salary of the applicant as per the observations of the Audit and such action is in accordance with the section 192 of the IT Act as stated in the Counter. We reject such arguments/averments on behalf of the respondents for the reason that no opportunity of hearing was allowed to the applicant and the representation of the applicant that he had already submitted the Form 10 (E) to the tax authorities was not considered in accordance with law. Moreover, the section 192 (1) of the IT Act, which has been cited in the written notes as discussed in para 10 of this order, allows the authorities to deduct the TDS from the salary to the extent of the income tax payable by the applicant for that year in which the salary is being paid. There is no provision in the section to deduct any shortfall in the TDS relating to the previous year from the salary paid in the current year. Hence, the argument of the respondents that under section 192(1) of the IT Act, they are required to deduct the shortfall of the TDS relating to the year 2015-16 from the salary paid to the applicant for the year 2018-19, is not sustainable. No rule or instruction of the Government has been produced before us by the respondents in their pleadings to show that their action to deduct the shortfall of TDS relating to past years from the current salary is permissible.

13. It is stated in the Counter that the amount deducted has been shown in the Form 16 towards tax deducted in the financial year 2018-19 and this amount can be taken on refund by the Income Tax Department. Since the amount deducted from salary rightly or wrongly was required to be deposited by the respondents with the tax authorities and the respondents have already deposited with the tax authorities, it will not be possible to direct the respondents to refund of this amount to the applicants.

14. In the circumstances and for the reasons as discussed above, we are of the considered view that the deduction of the amount in question from the applicants in these OAs on the basis of the impugned order dated 29.1.2019, issued in pursuance to the Audit observations without giving any opportunity of hearing to the applicant, has no legal basis and hence, it is legally

unsustainable. The said impugned order dated 29.1.2019 is accordingly quashed.

15. The OA No. 173/2019 and other OAs in the batch are allowed to the extent as mentioned above. Taking into account the harassment and losses caused to the applicants of these OAs due to action of the respondents, which is found to be legally unsustainable, each of the applicant of these OAs will be entitled for a cost of Rs. 5,000/- (Rs. five thousand only) to be paid by the respondents within 45 days from the date of receipt of this order. The respondents will be at liberty to recover such amount to be paid to the applicants towards cost from the officer found responsible for unauthorized deduction from the salary of the applicants, in accordance with the provisions of law.

16. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (J)

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