



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 11716/2025

Mr. Hemant Paliwal S/o Manohar Paliwal, Aged About 56 Years,
Village - Baga, P.o.kandhar, Tehsil Akri, District Solan, Himachal
Pradesh

-----Petitioner

Versus

1. Commissioner Of Income Tax (Tds), N.c.r. Building,
Statue Circle, Jaipur Email Id -
Jaipur.cit.tds@incometax.gov.in
2. Deputy Commissioner Of Income Tax (Tds), Room
No.002, Aayakar Bhawan, Paota C Road, Jodhpur Email
Jodhpur.dcit.tds@incometax.gov.in

-----Respondents

For Petitioner	:	Mr. Vikas Balia, Senior Advocate assisted by Mr. Sunil Joshi, Advocate, Mr. Madhusudan Singh Rajpurohit, Advocate (through V.C.), Ms. Aarohi Mikkilineni, Advocate and Ms. Alankrita Sharma, Advocate (through V.C.)
For Respondents	:	Mr. K.K. Bissa, Advocate Mr. G.S. Chouhan, Advocate

**HON'BLE THE CHIEF JUSTICE MR. K.R. SHRIRAM
HON'BLE MR. JUSTICE RAVI CHIRANIA**

Order

REPORTABLE

17/09/2025

(Per: Chief Justice)

1. Considering the nature of dispute involved, we decided to
take up the matter at this stage itself and dispose the same.
Therefore, rule is made returnable forthwith.
2. Petitioner is an individual employed with a company by the
name UltraTech Cement Limited.



3. Since 1995, petitioner was gainfully employed with Binani Cement Limited (for short 'Binani') as Vice-President (Finance and Accounts).

4. During Financial Year 2017-18, various taxes were deducted by Binani at source (TDS), which were not deposited within the time stipulated. The four heads of deductions with due dates, as given in the petition, are as under:

FORM 24Q-Salary

Quarter	Due Date
Q1	31 st July 2017
Q2	31 st Oct 2017
Q3	31 st Jan 2018
Q4	31 st May 2018

FORM 26Q- Other than Salary

Quarter	Due Date
Q1	31 st July 2017
Q2	31 st Oct 2017
Q3	31 st Jan 2018
Q4	31 st May 2018

FORM 27EQ - Payments made to non-residents supplier/employee

Quarter	Due Date
Q1	15 th July 2017
Q2	15 th Oct 2017
Q3	15 th Jan 2018
Q4	15 th May 2018

FORM 27Q- Payment made to non-residents Indians or foreign companies

Quarter	Due Date
Q1	15 th July 2017
Q3	15 th Jan 2018
Q4	15 th May 2018

5. On 25th July 2017, a petition against Binani under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for short) came to be filed by Bank of Baroda before NCLT, Kolkata. The said



petition came to be admitted on 25th July 2017 and a moratorium under Section 14 of IBC was declared and Interim Resolution Professional ('IRP' for short) also came to be appointed. Parallel proceedings against Binani were initiated and finally one UltraTech Cement Limited (petitioner's present employer) submitted a resolution plan which came to be finally accepted by the National Company Law Appellate Tribunal (for short 'NCLAT'). Pursuant thereto, UltraTech Cement Limited took over control of Binani on 20th November 2018 and re-named it as UltraTech Nathdwara Cement Limited. Subsequently, pursuant to a scheme of amalgamation, approved by NCLT, Kolkata and NCLT, Mumbai vide orders dated 18th December 2023 and 3rd April 2024 (rectified vide order dated 16th April 2024) respectively, UltraTech Nathdwara Cement Limited along with its subsidiaries was amalgamated with UltraTech Cement Limited. Petitioner was retained as an employee by resolution applicant, i.e., UltraTech Cement Limited and is presently holding the designation of Assistant Vice President-Commercial in Baga Cement Works (cement manufacturing unit of UltraTech Cement Limited).

6. The TDS amounts, which were to be deposited by Binani with the Central Government, came to be paid with interest over a period, the last of which was on 18th July 2018. It is pertinent to note that NCLT having admitted and appointed IRP based on order of admission dated 25th July 2017 of a petition that was filed under Section 7 of IBC, the law is very clear that IRP was in-charge of the company from that date. Therefore, Shri Balia was correct in submitting that only for a period of 10 days, i.e., first default of 15th July 2017 until 25th July 2017, petitioner could, even



assuming what respondents said is correct, be considered a person responsible to make payment to the Central Government, but under Section 17 of the IBC, from the date of appointment of IRP, the management of the affairs of the corporate debtor shall vest in IRP and the powers of the Board of Directors shall stand suspended and be exercised by IRP. So also, officers and management of the corporate debtor shall report to IRP and the IRP vested with the management of the corporate debtor be responsible for complying with the requirements under any law for the time being in force and on behalf of corporate debtor.

7. Thereafter, petitioner's-employer UltraTech Cement Limited received a letter dated 19th April 2022 from respondent no. 2 asking about details of the Company, its Directors, persons responsible for payment of TDS etc. or for defaults in depositing TDS amounts for quarters of F.Y. 2017-18. A response, vide communication dated 26th December 2022, was given by UltraTech Cement Limited giving details of proceedings before NCLT, Kolkata and subsequent take over of the company.

8. Out of the blue, respondent no. 2 issued a show cause notice dated 13th February 2025, i.e., more than 2 years later to petitioner calling upon him to show cause as to why he should not be treated as Principal Officer in terms of Section 2(35) of the Income Tax Act, 1961 (for short 'the Act'). Petitioner gave a detailed reply vide letters dated 20th February 2025 and 6th March 2025. Respondent no. 2 thereafter passed an order under Section 2(35) of the Act holding petitioner responsible for defaults of Binani Cement Limited as Principal Officer. It is petitioner's case



that none of the submissions given by him has been considered while passing the said order dated 5th March 2025.

9. This was followed by a show cause notice dated 11th March 2025 from respondent no. 1 to petitioner alleging that petitioner was a Principal Officer under Section 279(1) of the Act. Petitioner submitted a detailed response vide letter dated 18th March 2025.

According to petitioner, respondent no. 1, without considering his reply, passed an order dated 28th March 2025 under Section 279(1) read with Section 276B and Section 278B of the Act directing respondent no. 2 to initiate appropriate proceedings against petitioner. In effect, respondent no. 2 has been directed to initiate criminal prosecution against petitioner.

10. It is against these show cause notices, as also orders passed by respondent no. 1 and 2, petitioner has approached this Court.

11. Indisputably all amounts were paid *albeit* after NCLAT directed implementation of resolution plan by UltraTech Cement Limited.

12. Shri Balia admitted that there was a default during F.Y. 2017-18 by Binani and at the relevant time, petitioner was Vice-President (Finance and Accounts). He, however, submitted that earliest due date for deposit was 15th July 2017 when only two payments were due; one under Form 27EQ of payment made to Non-Resident supplier/employee and the other under Form 27Q of payment made to Non-Resident Indians or Foreign Companies. But then on 25th July 2017, Corporate Insolvency Resolution Proceedings (for short 'CIRP') were initiated against Binani and IRP came to be appointed. UltraTech Cement Limited submitted a resolution plan, which NCLAT thereafter, vide order dated 28th



February 2018, directed UltraTech Cement Limited to implement and UltraTech Cement Limited took control of Binani on 20th November 2018 and re-named Binani as UltraTech Nathdwara Cement Limited. Shri Balia submitted that in the meanwhile the company kept making payments with interest, last of which was made on 18th July 2018.

13. It was also submitted by Shri Balia that penal proceedings cannot be initiated merely because it was lawful to do so, unless the conduct of assessee is malicious or contumacious. It was also submitted that the authority competent to commence prosecution or give approval for prosecution will be justified in refusing to give approval when there is a technical or venial breach of provisions of the Act. Shri Balia submitted that from the facts noted above, there was a genuine problem with the company and certainly petitioner cannot be stated to have been guilty of conduct, contumacious or dishonest. Hence, show cause notices, as also penalty order should be quashed and set aside.

14. Mr. Bissa submitted that these are all after-thoughts. He submitted that Binani had deducted money from various parties towards tax to be deposited within the prescribed period but still retained the same with itself and did not pay to Central Government. It is to prevent such conduct, the Act provides for prosecution of persons responsible and therefore, authorities were justified in initiating prosecution against petitioner.

15. In our view, though the Act certainly provides for prosecution for non-deduction of taxes at source as also for non-payment of tax deducted at source, prosecution cannot arise merely upon a default which could be termed as venial breach of provisions of



the Act unless person responsible was guilty of conduct, contumacious or dishonest.

16. An order to commence prosecution for failure to deposit is a result of a semi or quasi-judicial criminal proceedings and prosecution cannot be initiated unless party obliged either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest or acted in conscious disregard of its obligation. Prosecution should not be initiated merely because it is lawful to do so. Whether prosecution should be initiated for failure to perform statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all relevant circumstances. The authority in our view, competent to prosecute, will be justified in refusing to prosecute when there is a technical or venial breach of provisions of the Act.

17. Here is a case where relevant period is 15th July 2017 to 15th May 2018 and from 25th July 2017 the company was under CIRP. In this case, even if we assume that there was non-compliance by petitioner, still it was only of two installments which were due on 15th July 2017 and not all installments because IRP came to be appointed on 25th July 2017. Petitioner was only an employee and moreover Binani was under financial stress and on 25th July 2017 CIRP was initiated. Further, the amounts have been paid even before show cause notice was issued and these amounts have been paid with interest. We find that explanation given by petitioner has also not been doubted or rejected. The case at hand is also not of TDS not being deducted but deducted and not deposited. It is not in dispute that before issuance of show cause notice, entire TDS amount was deposited along with interest



voluntarily by Binani. In our view, delayed compliance of provisions for deducting and depositing TDS stand alone shall not suffice to initiate prosecution against petitioner, who was only an employee.

18. We find support for this view expressed by us from the judgment of Hon'ble Supreme Court in **Hindustan Steel Ltd. Vs. State of Orissa**¹ as also of a co-ordinate Bench of this Court in **Future Infovision Pvt. Ltd. and Ors. Vs. Commissioner of Income Tax, TDS and Anr.**².

19. In the circumstances, we make the rule absolute.

20. Petition stands disposed in terms of prayer clause (i) and clause (ii).

21. If any consequential action has been initiated pursuant to order dated 28th March 2025, the same shall also stand quashed and set aside.

(RAVI CHIRANIA),J

(K.R. SHRIRAM),CJ

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1 (1969) 2 SCC 627

2 D.B. Civil Writ Petition No. 11431/2018 dated 18th March 2025 (unreported)