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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 2859/2016, CM APPL.11987/2016 (12.12.2016)

GROUPON HOLDINGS B.V. ..... Petitioner

Through: Mr. S. Ganesh, Sr. Advocate with Mr. S. Sukumaran and Mr. Bhupesh Kr. Pathak, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Mr. Rahul Chaudhary, Sr. Standing Counsel for revenue.
Mr. Vikram Jetely, CGSC for UOI/R-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **14.12.2016**

This matter is taken up today, as 12.12.2016, when it was originally listed, was declared a holiday on account of Id-E-Milad.

Counsel for the respondents seeks leave to place on record the counter affidavit; the same is hereby taken on the record.

The petitioner seeks directions to the respondents to issue it a certificate under Section 197 of the Income Tax Act, 1961; it had applied in that regard on 30.07.2015. What it claimed is the NIL due certificates for withholding or deduction of tax at source from the payment received by it from GroupMax Pte. Limited, Singapore. It claims that the capital gains arising out of the transfer - which is the underlying basis for transaction leading to the receipt, is covered by the Indo-Netherlands Double Taxation Avoidance Agreement ("DTAA") and, therefore, the tax regime in India under the Income Tax Act, 1961 stands excluded. The petitioner appears to have further acted upon its application by letters dated 25.08.2015, 18.11.2015 and 23.12.2015. It relies upon a Circular issued by the Commissioner of Income Tax (International Taxation-1), New Delhi, on 15.12.2014 to guide the concerned Assessing Officers.

The respondents' position in its counter affidavit does not seriously dispute the eligibility and, therefore, the entitlement of the petitioner to claim the NIL certificates that it does. It, however, stresses that the Circular relied upon was issued for the purposes of uniformity and consistency and cannot be interpreted as directions as is sought to be done. Counsel also highlights that even if a particular assessee qualifies for the certificates under Section 197, ultimately, it is issued depending upon exercise of discretion under Section 197.

The Court has considered the pleadings as well as the submissions. It is apparent that the respondent/revenue after due consideration does not seriously dispute the petitioner's eligibility for the issuance of the NIL certificates that it sought originally on 30.07.2015. In these circumstances, without expressing any decision as to the exercise of discretion generally under Section 197 and having regard to the facts of this case particularly the averments in the counter affidavit/return, a direction is issued to the concerned AO to consider the petitioner's application and issue necessary certificates at its earliest convenience and in any event by the end of first week of January, 2017.

Writ Petition stands disposed of.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 14, 2016*/vikas/*