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

WRIT PETITION NO. 1719 OF 2019

TLG India Private Limited ...Petitioner
Versus
Deputy Commissioner of Income Tax(TDS)-2(3) & ors. ...Respondents

Mr. Vikram Nankani, Sr. Advocate, Mr. Fereshte Sethna, Mr. Anay Banhatti, Mr. Mrunal Parekh, Mr. Hasmukh Ravaria, Mr. Rishabh Dubey i/b. DMD Advocates, advocate for petitioner.

Mr. P.C. Chhotaray, advocate for the respondent.

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATE : 29TH JULY, 2019.

P.C.:

1 Heard the learned Counsel for the parties for final disposal of the petition.

2 The Petitioner is a private limited company. The petitioner has challenged Certificate issued vide an order dated 4th June, 2019 passed by the Deputy Commissioner of Income Tax (TDS), the Respondent herein. Such an order was passed on an application filed by the Petitioner under section 197 of the Income Tax Act, 1961(hereinafter referred as “the Act” for short) requesting the said authority to permit the petitioner assessee not to deduct tax at source or to deduct tax at lower rates.

3 The learned Counsel for the petitioner pointed out that in the previous order, same authority had permitted deduction of tax at source at the rate of 0.02%. In the present order, impugned in this petition, the authority has prescribed different rates of deduction of tax at source ranging from 1% to 1.5%. The Counsel submitted that such prescription is excessive.

4 Though the impugned order does not specify so, our attention was drawn to the documents produced by the Petitioner alongwith an additional affidavit dated 2nd June, 2019 to contend that original proposal of the Income Tax Officer (TDS) was for deduction at the rate of 0.4%. However, subsequently, taking cognizance of an order dated 31st May, 2019, passed against the petitioner under section 201 of the Act, the final order came to be passed in which the said prescription had been made.

5 The order dated 31st May, 2019 passed by the Deputy Commissioner of Income Tax (TDS)-2(3) under section 201 of the Act was challenged by the Petitioner in separate Writ

Petition No. 1788 of 2019. This Petition is disposed off today by holding that the order unde challenge was passed in breach of principle of natural justice. Consequently, the order was quashed and proceedings were remanded before the original authority for passing fresh order.

6 We noticed that alongwith additional affidavit, the petitioner has produdced an order sheet dated 15/5/2019, in which the Deputy Commissioner of Income Tax(TDS) has recorded that there was a proposal for issuing certificate at the rate of 0.4% in relation to sections 194C, 194J, 194H and 194IB of the Act. However, subsequently, before final order came to be passed on 31st May, 2019, the Deputy Commissioner of Income Tax(TDS) made following further noting in his Order sheet alongwith an affidavit :

> "6. As the amounts mentioned in the computation filed for AY 2020-21 including the amounts claimed are on the basis of projections and are subject to variation based on the actual expenses which would be incurred during the said year. Accordingly, considering the facts and submissions made, it is proposed to issue certificate @ 1.14% in relation to 19C, 194J, 194H and 194IB.
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> 7 If the application for Lower Deduction of Tax is

allowed under section 197, the tax forgone on account of proposed certificates works out to Rs. 1238362755/-.

PROPOSAL FOR 197

8 In view of the above, and after considering the facts and circumstances of the case, and on the basis of the material on records, I am satisfied that the total income of the assessee justifies lower deduction of tax at source @ 1.14% in relation to 194C, 194J, 194H and 194IB.

9 Submitted for kind approval in view of CBDT Notification No. S.O. 647 dated 29.03.2011. If satisfied and approved, certificate for lower deduction of Tax u/s. 197 of the Income Tax Act, 1961 shall be issued for deduction of TDS in relation to 194C @ 1.00%, 194J @ 1.50%, 194H @ 1.00% and 194IB @ 1.50%, if approved."

7 Subsequently, the Deputy Commissioner of Income Tax(TDS) passed the impugned order, which, as can be clearly seen, was influenced by the order dated 31^{st} May, 2019 passed under section 201 of the Income Tax Act, 1961 against the Petitioner. The said order may not be the sole basis, was undoubtedly an important element which went into the decision making process. Therefore, now that the existence of order dated 31^{st} May, 2019 does not survive, the Deputy

Commissioner of Income Tax (TDS) should undertake fresh exercise and decide the rate of income tax to be deducted while making payment to the Petitioner under different provisions mentioned above. For such purpose, the impugned order is set aside. The Deputy Commissioner of Income Tax(TDS) shall pass fresh order within four weeks from today in view of the changed circumstances.

8 However, till this is done, the petitioner cannot be left to be verse off then when the impugned order was in operation. Therefore, till fresh order is passed, the Petitioner would continue to be governed by the prescription made in the impugned order. This is purely by way of interim arrangement to protect the interest of the Petitioner as well as the Revenue.

9 The Writ Petition is disposed of accordingly.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**

Talwalkar