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

\+ W.P.(C) 9389/2019

JIANGDONG FITTINGS EQUIPMENT CO LTD ..... Petitioner

Through: Mr. Abhimanyu Jhamba, Ms.Hemlata Ranga, Ms. Hatneimawi, Ms.Thonpinao Thangal & Mr. Ashish Jhamb, Advocates.

versus

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

Through: Ms. Laxmi Gurung, Senior Standing Counsel & Mr. Tushar Gupta & Mr.Siddharth Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **06.09.2019**

<u>C.M. No.38685/2019</u>

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

<u>W.P.(C) 9389/2019 and C.M. No.38684/2019</u>

The petitioner has preferred the present writ petition to assail the order dated 31.05.2019, whereby the order under Section 197(1) has been passed raising the deduction of TDS from 1% – which was fixed for the earlier years, to 4%. The grievance of the petitioner is that the deduction of

TDS has been raised arbitrarily without communicating any reasons to the petitioner and without granting any hearing to the petitioner. The submission is that the petitioner continues to perform the same contracts as before for the same employer and there was no justification for change of the rate of deduction of TDS from 1% to 4%.

Learned counsel for the respondent – who appears on advance notice, submits that the Assessing Officer has recorded detailed reasons on record to justify the fixation of the higher rate of deduction of TDS at 4%.

Learned counsel for the petitioner has placed reliance on the decision of this Court in ***Bently Nevada LLC Vs. Income Tax Officer, Ward-1(1)(2), International Taxation & Another***, W.P. (C.) No. 7744/2019 decided on 29.07.2019. In this case, the Court had quashed the certificate issued under Section 197(1) of the Act and directed a fresh order to be passed recording reasons for the same. The said decision, in turn, places reliance on the decision of the Bombay High Court in ***Tata Teleservices (Maharashtra) Ltd Vs. Deputy Commissioner of Income-Tax (TDS)***, (2018) 402 ITR 384 (Bom). A perusal of this decision does not betray the fact that prior to issuance of a certificate under Section 197(1), the Assessing Officer is obliged to grant personal hearing to the assessee. All that is required is that the Assessing Officer should have good reasons to issue the certificate under Section 197(1) of the Act and the said reasons should be communicated to the assessee.

In view of the aforesaid position, we dispose of this petition with a direction to the respondents to provide to the petitioner within one week the reasons recorded for issuance of the impugned certificate fixing the rate of deduction of TDS at 4%. It shall be open to the petitioner to assail the said reasons in case the petitioner is aggrieved thereby.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 06, 2019

B.S. Rohella