

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

Date of Decision: 03.12.2020

+ **W.P.(C) 13496/2019**

BRITISH AIRWAYS PLC ... Petitioner
Through: Mr.Vishal Kalra, Advocate.

Versus

INCOME TAX OFFICER & ORS. ... Respondents
Through: Mr. Ruchir Bhatia, Senior Standing
Counsel with Ms. Mansie Jain and
Ms. Madhura MN, Advocates.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN
HON'BLE MR.JUSTICE SANJEEV NARULA

SANJEEV NARULA, J. (oral)

1. The Petitioner is a foreign company, incorporated under the laws of the United Kingdom and resident of U.K. under the India-U.K. DTAA. By way of the present writ petition, it seeks a direction for issuance of a lower withholding certificate under Section 197(1) of the Income Tax Act, 1961 [*hereinafter referred to as the 'Act'*], effective from 1st April, 2019 for Financial Year [*hereinafter referred to as 'FY'*] 2019-20.
2. Mr. Vishal Kalra, learned counsel for the Petitioner submits that the Petitioner is engaged in the business of operating aircraft in international traffic and its revenue/income in relation to its international air traffic to and from India is derived from ticket sales

and cargo traffic. As its income/profits are not chargeable to tax under Article 8 of India-UK DTAA r/w Section 90(2) of the Act, the Petitioner requested for nil rate of withholding tax. Mr. Kalra further submits that starting from the calendar year in question, the TDS Reconciliation, Analysis and Correction Enabling System [*hereinafter referred to as the 'TRACES'*] was unable to accept manual applications till March, 2019. On 25th February, 2019, Petitioner had tried to file a manual application, but it was not accepted by the Income Tax Department. Therefore, Petitioner could file its first application only on 18th March, 2019. Even on the said date, the TRACES system permitted concurrent insertion of only three parties in the defined fields provided therein, and allowed attachment of documents as annexures. The system allowed only one application to be filed at a time. Due to the aforesaid constraints, *vide* application dated 18th March, 2019, Petitioner inserted the names of 3 parties in the space provided in the online form, and documents – containing names of approximately 300 other parties for which it needed the certificate – were uploaded as annexure thereto.

3. Mr. Kalra further submits that the application made by the Petitioner remained pending till 3rd June, 2019, on which date the AO issued certificates for 3 parties whose names were provided in the designated fields in the Form. Realizing that no certificate was issued for the remainder parties mentioned in the uploaded documents, Petitioner made an application dated 5th June, 2019 to the AO, through the TRACES system, which by then allowed insertion of 50 parties

concurrently. However, since the limitation of the system to make one application at a time still remained, Petitioner was precluded from making an application for the balance parties. The certificate for the said application was issued by the AO on 13th June, 2019. Thereafter Petitioner made applications in a similar manner on 14th June, 2019, 2nd July, 2019 and 10th July, 2019 for which the certificates were issued on 2nd July, 2019 and 7th August, 2019 respectively. During this period the Petitioner continuously followed up with the officer of the Centralized Processing Cell, TRACES Customer care, explaining the challenges faced. Ultimately, the CPC, taking note of similar representations made by several assessees, resolved the issue in the system. Taking benefit of the upgradation, the Petitioner filed four applications dated 10th July, 2019 for 180 parties. The certificate for the balance 230 parties was issued on 7th August, 2019. The certificate dated 7th August, 2019 mentions all the parties for which the Petitioner sought certificate for, including the date on which such certificates were issued. Mr. Kalra submits that the system generated certificates are valid from the date of issue. Because of the delay in issuance of the certificates, Petitioner was suffering grave hardship and accordingly pursued the Respondents to issue a clarification that no TDS is required to be deducted from payments received for the period of 1st April, 2019 to 12th June, 2019. Respondents have, however, declined to do so. In the absence of any clarification from the Respondents, the period starting from 1st April, 2019 to the date of issuance of the certificates is not covered by the certificates issued by the Respondents. Mr. Kalra further emphasizes that the lower

withholding certificates have been issued at nil rate by the Respondent No.1 for years FY 2018-19, 17-18 and 16-17 effective from 1st April of the respective year. In these circumstances, the Petitioner prays that the withholding tax certificates should be effective from 1st April, 2019 for FY 2019-20 and seeks appropriate direction in this regard.

4. We have given due consideration to the contentions of the learned counsel for the parties and have perused the record. When the petition first came up for hearing on 20th December, 2019, this Court passed the following order:-

“The limited grievance of the petitioner raised in this petition is that the withholding tax certificate issued to the petitioner has been made effective from the date of issue and not from the beginning of the financial year i.e. 01.04.2019. For example, it is pointed out that one of the certificates placed at page 61 of the record has been made effective from 13.06.2019 whereas the same had been applied for financial year 2019-20. Counsel for the petitioner states that for other jurisdictions, necessary clarifications have been issued by the respondents themselves.

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5. On 7th January, 2020, after taking note of the contentions of the parties, the Court passed the following order:

“1. On the last date, Mr. Bhatia, learned senior standing counsel for the Revenue had sought time to take instructions on the limited grievance raised by the petitioner that the withholding tax certificate issued to the petitioner has been made effective from the date of issue, and not from the beginning of the financial year i.e. 01.04.2019.

2. The case of the petitioner is that on and from 01.04.2019, the respondent introduced the system of making the application for reduced withholding tax under Section 197 of the Income Tax Act, 1961 electronically. However, initially the system of the respondent

did not permit the applicant to include the particulars of more than three parties. Consequently, the petitioner made the application in respect of three parties and submitted an annexure containing the particulars of 337 parties alongwith the application. The said list has been placed on record.

3. Learned counsel for the petitioner submits that even in the previous years, the respondent had issued lower withholding tax certificates in respect of the same parties. It appears that the respondents kept upgrading their systems and, as and when the same was done, the petitioner kept making applications for lower withholding tax in respect of the said 337 parties. However, certificates were granted from the date of making of separate applications despite the initial application being made on 18.03.2019.

4. Mr. Bhatia, submits that he has no written instructions and is not in a position to state as to whether, the electronic system initially did not permit making an application in respect of more than three parties. He seeks further time to take instructions in this regard. He states that in view of the impending union budget, four weeks' time be granted to file reply.

5. The petitioner has placed on record the lower withholding tax certificate issued in respect of the financial year 2018-19. We find that the parties to whom the lower withholding tax certificates were issued for the financial year 2018-19 are the same. In a matter like the present one, time is of the essence since the petitioner is being subjected to higher deduction of tax at source by the parties which are transacting in business, while its claim is for lower withholding tax. The petitioner is a well-established business enterprise. Though, the lower withholding tax certificates have been issued in respect of all the parties, the dispute remains with regard to the date from which the certificates should take effect since the petitioner claims that it had made the application on 18.03.2019 for the financial year 2019-20. In respect of all the parties, we are inclined to direct as an interim measure that the said certificates issued to the petitioner would be effective for the entire financial year of 2019-2020, subject to further orders.

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6. On the succeeding date i.e. 14th February, 2020, the interim order was made absolute till the disposal of this writ petition.
7. Till date, the Respondents have not filed any counter affidavit. However, a copy of a communication dated 12th February, 2020 from the ITO (TRACES), CPC (TDS) to the ITO, TDS Ward-1(1)(2), International Taxation, New Delhi in the context of the present writ petition, has been placed on record. The said communication is relied upon by the Revenue as a response to the grounds urged by the petitioner in the present writ petition. The said communication reads as under:

“Centralized Processing Cell (TDS)
Aayakar Bhawan, Sector-3, Vaishali,
Ghaziabad-201010

F.No.CPC-TDS/Writ Petition/Form 13/2019-20/

Date: 12.02.2020

To,

The Income Tax Officer
TDS, Ward-1(1)(2), International Taxation
New Delhi

Sir,

Subject: Writ Petition No. W.P.(C) 13496/2019 in the case of British Airways PLC Vs. Income Tax Officer & Ors. – reg Ref:-1) F.No. ITO/Ward(1)(2)/2019-20/180 dated 06.02.2020.

Kindly refer to the subject cited above.

2. I am directed to refer to the above mentioned letter on the subject matter and forward comment as under

Applicant's Grounds	Comments
1. Till late March, 2019 the online system known as TRACES was	The online Form-13 functionality (for Lower/Nil Deduction Certificate) was deployed on website (TRACES) on 12.11.2018

practically not working. The taxpayers at large were not able to apply online for issuance of lower withholding certificate.	and has been working properly without any major downtime. Besides, it is to highlight that total 8366 Form-13 were received on website (TRACES) from 12.11.2018 till March, 2019 and all functionalities on website (TRACES) were working to process these requests. The assessee had filed online application on the website on 18.03.2019 vide request no. 5517 with three TANs which are, DELM25694E, DELT04391C, DELA51631G. The Nil Deduction Certificates for the same were issued on 03.06.2019.
2. When the petitioner made an online application on 18.03.2019, only three parties could be inserted as per online format.	The taxpayer/deductee can submit the Form No. 13 along with supporting documents electronically in two modes: a) Online mode (For upto 50 TANs) b) Offline Utility mode (For more than 50 TANs) While applying Form-13 a pop-up is flashed on the screen to inform about the mode that can be used by the applicant (screenshot is placed as Annexure-I) for the submission of Form-13. Detailed FAQs (https://contents.tdscpc.gov.in/en/faq-taxpayer-Form-13.html) (placed as Annexure-II) and E-Tutorials (https://contents.tdscpc.gov.in/docs/E-Tutorial) on Form-13 are also available on TRACES (www.tdscpc.gov.in) Revision functionality is also

	<i>available to add/modify TAN/TANs. The assessee had filed online application using online mode on the website on 18.03.2019 vide request no. 5517 with only three TANs which are, DELM25694E, DELT04391C, DELA51631G.</i>
3. The department however did not issue certificates for the parties uploaded as annexure due to inherent default in the online system.	<i>As per the available functionality applicant needs to furnish the details of transaction and TAN in the online Form-13. The applicant filed the details in Annexure-I of Form 13 and attached the list of TANs alongwith other documents in Form 13. The applicant did not opt for the offline utility mode which was applicable as per the procedure for more than 50 TANs.</i>

This issues with the approval of CIT(CPC-TDS).

Encl: As above”

8. During the course of the arguments, Mr. Bhatia, learned senior standing counsel, relying on the aforesaid communication, submitted that the Petitioner had the option of both online mode and offline mode to submit Form No-13 along with the supporting documents. The Petitioner ought to have availed the offline utility mode which was applicable, as per procedure, for more than 50 TANs. Be that as it may, indisputably, Petitioner made the applications well within time i.e. on 18th March, 2019. Mr. Bhatia also admits that in light of the interim order passed by the court, denial of the final relief, as sought by the Petitioner, would cause grave hardship and result in a situation that would have undesirable ramifications and consequences that would adversely affect the Petitioner as well as the TANs named in

the certificates. Having perused the record and considering the fact that the parties to whom the withholding tax certificates were issued for the FY 2018-19 are the same, we have no reason to doubt that the Petitioner was incapacitated from making applications as per the online format for all the parties for whom it wanted to have the withholding tax certificates issued. Petitioner has also asserted that it could not make an application for more than 3 TANs initially, and thereafter, when the system allowed for applying for 50 TANs, multiple applications could not be made. With the initial application, Petitioner also enclosed the particulars of 337 parties for whom similar certificates were requested. The only plausible reason the names could not be added in the designated fields, was the technical inadequacy of the system. That said, concededly, for the TANs in the said list, the Revenue subsequently has indeed issued certificates. In these facts and circumstances, we have no reason to deny the relief sought for in the present petition. Accordingly, it is declared that the withholding tax certificates issued by the respondents which are the subject matter of the present writ petition shall be effective from 1st April, 2019 for FY 2019-20. The interim orders are made absolute.

9. With the above directions, the present writ petition is allowed.

SANJEEV NARULA, J

MANMOHAN, J

DECEMBER 03, 2020

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