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

+ **W.P.(C) 6184/2021 & C.M.Nos.19584-19586/2021**

HERO WIND ENERGY PRIVATE LIMITED Petitioner

Through: Mr.Rajat Mittal, Advocate.

Versus

COMMISSIONER OF INCOME TAX TDS DELHI I..... Respondent

Through: Mr.Sunil Aggarwal, Advocate.

+ **W.P.(C) 6266/2021 & C.M.Nos.19812-19814/2021**

HERO SOLAR WIND ENERGY PRIVATE LIMITE Petitioner

Through: Mr.Rajat Mittal, Advocate.

Versus

COMMISSIONER OF INCOME TAX TDS DELHI I..... Respondent

Through: Mr.Sunil Aggarwal, Advocate.

% Date of Decision: 09th July, 2021.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN,J: (Oral)

1. The petitions have been heard by way of video conferencing.
2. Present writ petitions have been filed challenging the order dated 18th June, 2021 passed by respondent no-2, DCIT, TDS Circle 74(1), New Delhi whereby the applications filed by the petitioners for Nil rate of Tax

Deduction at Source [TDS] under Section 197 of the Income Tax Act, 1961 [the Act] was rejected. Petitioner also seeks direction to the respondent to issue a fresh Certificate of TDS at a lower rate.

3. Learned counsel for the petitioners states that the petitioners are entitled to receive certain interest income from its group companies, on which these companies are liable to deduct TDS in terms of section 194A of the Act. He further states that the Petitioner had applied for certificate of deduction of TDS at Nil rate as the TDS being deducted at the notified rate of 10% would have been much higher than the total income tax payable by the Petitioner inasmuch as the petitioner is a loss-making company. He also states that though the petitioners' were deducting TDS at the rate of 0.5% in the FY 2020-21, yet by virtue of the impugned order they would have to deduct TDS at the notified rate of 10%.

4. He points out that the applications of the petitioners were rejected solely for the reason that the petitioners have not submitted the rate at which it borrows funds from the market which is then lent at 9.45% to their group companies. He states that this is incorrect as the petitioners had submitted the requisite information to the respondent.

5. Issue notice. Mr. Sunil Aggarwal, Advocate accepts notice on behalf of the respondent. He refers to petitioners' letter dated 15th June, 2021 to contend that the information supplied by the petitioners in response to the queries raised by the Deputy Commissioner of Income Tax was incorrect and erroneous.

6. Having heard learned counsel for the parties and having perused the paper book, this Court finds that the impugned order is a cryptic one and it gives no reasons for rejection of the petitioners' application for Nil rate of

Tax Deduction at Source under Section 197 of the Act. It is nowhere mentioned in the impugned orders that the information supplied by the petitioners were erroneous and incorrect.

7. Moreover, this Court in a number of judgments has held that the Assessing Officer cannot ignore the mandate of Rule 28AA and proceed on any other basis as the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated (See: *Bently Nevada LLC vs. Income Tax Officer, Ward-I(1)(2), (2019) 107 taxmann.com 440 (Delhi)* and *Manpower Group Services India Pvt. Ltd. vs. Commissioner of Income Tax (TDS)-I and Anr., (2021) 430 ITR 399*).

8. Consequently, the impugned orders are set aside and the matters are remanded back to the Assessing Officer for *de novo* hearing. The Assessing Officer is directed to decide the applications filed by the petitioners within four weeks by way of a reasoned order in accordance with law. The authorized representative of the petitioners shall appear before the Assessing Officer on 15th July, 2021 at 11:00 A.M.

9. In view of the aforesaid, the present writ petitions along with pending applications stand disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 9, 2021

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