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

+ **W.P.(C) 6809/2021**

RISO INDIA PRIVATE LIMITED

.....Petitioner

Through: Mr. Piyush Kaushik, Advocate.

versus

**PRINCIPAL COMMISSIONER OF
INCOME TAX -7, DELHI**

..... Respondent

Through: Mr. Sunil Agrawal, Advocate.

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Date of Decision: 22nd 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 petition has been heard by way of video conferencing.
2. Present writ petition has been filed challenging the order dated 31st March, 2021 passed by the respondent-PCIT, Delhi-7, for assessment year 2016-17, under Section 264 of the Income Tax Act, 1961 [for short 'the Act'], whereby the respondent refrained from giving any finding on merits and declined to entertain the petitioner's revision petition. Petitioner also seeks a direction to the respondent to decide the petitioner's revision petition on merits.

3. Learned counsel for the petitioner-assessee states that the petitioner, a wholly owned subsidiary of Riso Corporation Japan, had remitted dividend to its holding company on which tax was deducted @ 20.35% under Section 115-O of the Act, even though as per the beneficial provisions of India-Japan Double Taxation Avoidance Agreement (DTAA), the tax was required to be deducted @ 10%. He points out that to rectify the said inadvertent error, petitioner filed the revision petition seeking refund of excess tax.

4. He submits that the respondent was statutorily obliged to give a finding on merits, with respect to excess deposit of tax, while deciding the revision petition. In support of his submission, learned counsel for the petitioner relies upon the judgment of the ITAT in *M/s Giesecke and Devrient India Pvt. Ltd. Vs. Additional Commissioner of Income Tax, Special Range-04, ITA No. 7075/Del/2017* as well as judgments of this Court in *Vijay Gupta vs. Commissioner of Income Tax, Delhi-III, (2016) 386 ITR 643*, *M/s Epcos Electronic Components SA Vs. Union of India, WP(C) 10417/2018* dated 10th July, 2019 and judgment of the Supreme Court in *Union Of India And Others vs Kamlakshi Finance Corporation, AIR 1992 SC 711*.

5. Issue notice. Mr. Sunil Agrawal, learned counsel for respondent, accepts notice. He submits that the matter pertains to the period during which Dividend Distribution Tax regime under Section 115-O was prevalent. Under this system, the tax on distributed profits was to be borne by the Company distributing the dividends, and subsequently the dividends received by shareholders post payment of Dividend Distribution Tax by the Company was statutorily exempt from tax under Section 10 of the Act. He

states that this scheme of Dividend Distribution Tax has been construed by Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. v. DCIT [(2017) 394 ITR 449 (SC)]**. In view of the same, he further submits that the rate of tax on distributed profits that is applicable is the one stipulated under section 115-O of the Income Tax Act and not the one prescribed under Article 10 of the DTAA, because the rate of tax in the hands of the shareholders is more beneficial under the Income Tax Act as compared to the DTAA.

6. However, upon hearing the counsel for the parties, this Court finds that the respondent has dismissed the petitioner's revision petition without giving any reason on merits, except stating that the petition was premature, as according to the learned Commissioner, the Revenue still had time to file an appeal against the ITAT judgment in the case of **M/s Giesecke and Devrient India Pvt. Ltd. Vs. Additional Commissioner of Income Tax, Special Range-04** (Supra). The relevant portion of the impugned order is reproduced hereinbelow:-

“3. I find that the submissions of the assessee in the present petition substantially draw from and are based on the discussion in the aforesaid order of ITAT in the case of M/s Giesecke & Devrient (India) Pvt. vs. Addl. CIT, Special Range-04, New Delhi (ITA No. 7075/DEL/2017). However, I note that this judgment was delivered on 13.10.2020 and the Income Tax Department still has time to take a decision on filing of appeal, if any, against the said judgment. As such, it cannot be said that the Department has accepted or acquiesced in the judgment of ITAT on the above issues on merit, and the legal position of the questions involved is not yet settled. Hence a remedy under Section 264, as requested, is pre-mature.”

4. *As such, without going into the merits of the grounds raised by the assessee, I, in view of the above facts and legal position, decline to entertain this petition under section 264 of the Act, and to intervene for revising the assessment order for the captioned year passed by Assessing Officer on 19.12.2018 accepting the returned income.”*

7. Consequently, from the aforesaid, it is apparent that the learned Commissioner has neither applied its mind to the controversy at hand nor passed a reasoned order. Accordingly, the impugned order dated 31st March, 2021 is set aside and the matter is remanded back to the respondent-PCIT, Delhi-7 for passing a reasoned order within six weeks after giving an opportunity of hearing to the petitioner. This Court clarifies that it has not expressed any opinion on merits of the controversy. All rights and contentions of the parties are left open. In the event the petitioner is aggrieved by the decision of the respondent, it shall be open to the petitioner to file appropriate proceedings in accordance with law, if permissible.

8. Accordingly, the present writ petition stands disposed of.

9. 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 22, 2021
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