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

+ **W.P.(C) 8041/2021 & CM APPLs. 25024/2021, 25025/2021**

CLOUDTAIL INDIA PRIVATE LIMITED Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate with
Mr. Vishal Kalra and Mr. S.S. Tomar,
Advocates

versus

**THE COMMISSIONER OF
INCOME TAX (TDS) DELHI & ANR. Respondents**

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel.

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Date of Decision: 09th August, 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 28th April, 2021 [received vide email on 18th June, 2021] passed by respondent no. 2, Income Tax Officer (TDS), Circle 73(1), under Section 197(1) of the Income Tax Act, 1961 [the Act] for the Assessment Year 2021-22 whereby the petitioner's Form 13 application for Nil/lower withholding tax certificate was rejected. Petitioner also seeks direction to the respondents to issue certificate under Section 197(1) of the Act at Nil rate to the petitioner.

3. Learned Senior Counsel for the petitioner states that ageing of inventory is very common in retail business and based on the period of holding of the inventory, the Petitioner creates provision for slow and ageing inventory on scientific and reasonable estimate on the entire inventory in the books of accounts and financial statements.

4. He states that the petitioner *suo motu* disallows/adds back the provisions which are not allowable under Section 37 of the Act and does not claim deduction in the computation of taxable income, forming part of the return of income. He emphasises that the treatment for slow and ageing inventory is revenue neutral and the same has been done in accordance with the Accounting Standard 2 stipulated by the Institute of Chartered Accountants of India.

5. According to him, this provision for slow and ageing inventory gets reversed in the beginning of the following year in the books of account for the succeeding financial year; consequently, the reversal of provision (which goes to enhance the book profit for the succeeding year) is claimed as a deduction in the computation of taxable income for that year, to avoid double taxation.

6. Learned Senior Counsel for the petitioner points out that the AO passed the assessment order accepting the returned income for the AY 2018-19 after the petitioner had provided an explanation with respect to the inventory provision.

7. He states that deduction of tax under Section 194O of the Act at the rate of 1% would result in huge refund of taxes causing severe hardship to the petitioner.

8. Learned Senior Counsel for the petitioner relies on the Standard Operating Procedure laid down by the Central Board of Direct Taxes vide Notification 8/2018 as well as the Rule 28AA of the IT Rules which lay down the procedures and parameters for issuing certificates under Section 197 of the Act. He submits that the scope of scrutiny under Section 197 read with Rule 28AA is limited and as the AO had neither followed the procedure prescribed therein, nor given any reasons in the impugned order, the same is liable to be quashed.

9. He relies on the judgments of this court in *Bently Nevada LLC vs ITO WP 7744 / 2019* and *Manpowergroup Services India vs CIT W.P. (C) 58651/2020* where under similar circumstances TDS certificates under Section 197(1) were set aside.

10. He lastly contends that even if the AO were to deny the inventory related deduction and deduction of education cess, there would still be no tax payable by the Petitioner. He emphasises that even in that eventuality refund of Rs. 197 crores would be due and payable to the petitioner for the AY 2021-22.

11. Issue notice.

12. Mr. Ruchir Bhatia, Advocate accepts notice on behalf of respondents. He states that AO has given reasons for rejecting petitioner's Form 13 application for Nil/lower withholding tax certificate. He also states that as there was limited scrutiny for A/Y 2018-19, the provision for slow and ageing inventory was not examined by the AO.

13. Mr. Bhatia, however, states that as now in the writ petition the petitioner has clarified that the provision creating slow and ageing inventory in relation to the relevant AY has not been claimed as a deduction in the said

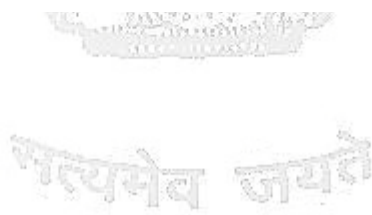
year, the matter can be sent back to the AO for re-examination.

14. Though in rejoinder, learned senior counsel for the petitioner disputes the contention advanced by learned counsel for the respondent, yet he has no objection to the matter being remanded back to the AO.

15. Accordingly, in view of the statement made by learned counsel for the respondent, the impugned order dated 28th April, 2021 [received vide email on 18th June, 2021] passed by respondent no. 2, Income Tax Officer (TDS), Circle 73(1), under Section 197(1) of the Act for the Assessment Year 2021-22 is set aside and the matter is remanded back to the AO to determine the said application afresh in accordance with law. Respondent no. 2 shall pass a reasoned order in accordance with law after giving an opportunity of hearing to the authorised representative of the petitioner within four weeks.

16. With the aforesaid directions, present writ petition and applications are disposed of.

17. 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

AUGUST 09, 2021

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