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

Date of Decision: 30.09.2021

+ W.P.(C) 10967/2021 & CMs 33806-07/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advts.

versus

INCOME TAX OFFICER & ANR. Respondents
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

(27) W.P.(C) 10980/2021 & CMs 33829-30/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advts.

versus

INCOME TAX OFFICER & ANR. Respondents
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

(28) W.P.(C) 10981/2021 & CMs 33831-32/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advts.

versus

INCOME TAX OFFICER & ANR. Respondents
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

(31) W.P.(C) 11120/2021 & CMs 34263-64/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advs.

versus

INCOME TAX OFFICER & ANR. Respondents
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

(32) W.P.(C) 11121/2021 & CMs 34265-66/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advs.

versus

INCOME TAX OFFICER & ANR. Respondents
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

(33) W.P.(C) 11122/2021 & CMs 34267-68/2021

BT (INDIA) PRIVATE LIMITED Petitioner
Through Ms.Kavita Jha, Mr.Udit Naresh,
Advs.

versus

INCOME TAX OFFICER & ANR. Respondent
Through Mr.Sunil Kumar Agarwal, Sr.
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM APPL. 33807/2021 (Exemption) in W.P.(C) 10967/2021

CM APPL. 33830/2021 (Exemption) in W.P.(C) 10980/2021

CM APPL. 33832/2021 (Exemption) in W.P.(C) 10981/2021
CM APPL. 34264/2021 (Exemption) in W.P.(C) 11120/2021
CM APPL. 34266/2021 (Exemption) in W.P.(C) 11121/2021
CM APPL. 34268/2021 (Exemption) in W.P.(C) 11122/2021

Allowed, subject to all just exceptions.

WP(C) 10967/2021 & CM No. 33806/2021
WP(C) 10980/2021 & CM No. 33829/2021
WP(C) 10981/2021 & CM No. 33831/2021
WP(C) 11120/2021 & CM No. 34263/2021
WP(C) 11121/2021 & CM No. 34265/2021
WP(C) 11122/2021 & CM No. 34267/2021

1. These petitions have been filed by the petitioner challenging the common order dated 26.08.2021 passed by the respondent no.1 in compliance with the order dated 19.03.2021 passed by this Court in a batch of petitions filed by the petitioner. The petitioner further challenges the Show Cause Notices issued under Sections 201(1) and 201(1A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') to the petitioner.

2. On an allegation that in a survey conducted under Section 133A of the Act at the premises of the assessee on 06.03.2019, it was noticed that the assessee had made payments to non-residents without deduction of Tax at Source (hereinafter referred to as 'TDS'), notices under Section 201(1) and 201(1A) of the Act were issued to the petitioner.

3. The petitioner challenged the said notices before this Court in a batch of petitions.

4. This Court, by its common order dated 19.03.2021, was pleased to pass the following orders /directions while disposing of the said petitions:

“7. Having heard the learned counsel for the parties, according to us, if the statutory authority exercises its powers without determining whether or not it has jurisdiction in the matter, that itself, may, in certain cases, call for interference.

7.1 In this particular matter, as pointed out by Mr. Vohra (something which has not been refuted by Mr. Aggarwal), 85 to 90% of the remittances have been made to the BT Plc, a non-resident company, which approached the Authority for Advance Rulings [in short “AAR”] as far back in 2015.

7.2 The record shows that the application of AAR was admitted as far back on 07.08.2015. Therefore, a large part of problem, to say, has its genesis in the AAR not acting with due alacrity. However, having regard to the submissions made before us by learned counsel for the parties, we are of the view that, for the moment, the captioned writ petitions can be disposed of with the following directions:

(i) The concerned authority will adjudicate the impugned show cause notices qua which we are told that the petitioners have filed their replies.

(ii) While carrying out the adjudication, the concerned authority will in the first instance determine as to whether or not the jurisdictional facts obtain in the matter i.e. whether the remittances in issue are chargeable to tax.

(iii) *The concerned authority will, therefore, in the first instance pass an order on this aspect of the matter.*

(iv) *The concerned authority in this behalf will give personal hearing to the authorized representative of the petitioner, which will include the advocate engaged by the petitioner.*

(v) *A speaking order will be passed and a copy of the same will be furnished to the petitioner.*

(vi) *The petitioner will have liberty to assail the same as per law by taking recourse to an appropriate remedy.*

(vii) *In case, the order passed is adverse to the interests of the petitioner, the same will not be given effect to for four weeks, commencing from the date the said order is served on the petitioner.*

(viii) *In case, the concerned authority feels it is necessary to await the decision of the AAR in the matter concerning BT Plc, it will be free to take this aspect into account as well."*

5. The respondent no.1 has passed the Impugned Order dated 26.08.2021 in purported compliance with the order passed by this Court on 19.03.2021.

6. The learned counsel for the petitioner submits that the Impugned Order does not fully comply with the directions issued by this Court in its order dated 19.03.2021. She submits that the respondent no.1 was to first determine as to whether the remittances in issue are chargeable to tax, which is the jurisdictional fact to be proved before assuming jurisdiction under Section 201(1) and 201(1A) of the Act. She submits that in the present case, the

petitioner had entered into an agreement with British Telecommunication Plc, a company incorporated and resident in London, United Kingdom (hereinafter referred to as the 'BT Plc') to provide the telecommunication-related support services to the said company's international customers. The petitioner has also procured various satellites and other business support service from BT Plc for the purposes of facilitating services to customers of BT Group, in lieu of the payment of service fee. She submits that the payments have been made to BT Plc without TDS under Section 195 of the Act, as such payments are not taxable in India.

7. The learned counsel for the petitioner further submits that BT Plc has filed an application dated 18.02.2013 under Section 245Q of the Act, being AAR No. 1448 of 2013, and a letter dated 19.03.2019 before the Authority for Advance Rulings (hereinafter referred to as 'AAR') seeking an advance ruling on the taxability of such remittance in the hands of BT Plc in India, which was admitted by the AAR vide order dated 07.08.2015 and is pending adjudication. She submits that the respondent no. 1 ought to have awaited the adjudication of the said application,

8. She submits that the remittances made by the petitioner to BT Plc are not chargeable to tax and therefore, the jurisdictional conditions for initiation of proceedings under Section 201 of the Act are not fulfilled. She submits that the Impugned Order passed by the respondent no.1 incorrectly observes that such remittances are not completely exempt from tax. She submits that in any case, this issue

is pending resolution before the AAR, however, the respondent no.1 has wrongly assumed that the only issue pending before the AAR is the quantification and not on the very chargeability of tax on the said amount.

9. She further submits that in any case, the initiation of proceedings by notice dated 17.03.2020 was barred by limitation and therefore, could not have been proceeded with.

10. On the other hand, the learned counsel for the respondent, who appears on an advance notice, submits that the Impugned Order has been passed in compliance with the order of this Court dated 19.03.2021. The petitioner would have a remedy of appeal against the final adjudication in the proceedings and therefore, this Court should not interfere with the impugned Order and proceedings at this stage.

11. He further submits that against the final orders passed for the Assessment Years (hereinafter referred to as 'AY') 2012-13 and 2013-14, the petitioner had been declared to be an 'assessee in default' and tax demand raised against it. The petitioner has challenged the said orders in appeal before the Commissioner of Income Tax (Appeals) (hereinafter referred to as 'CIT(A)'). The petitioner cannot be allowed to agitate the same issue in different *fora*.

12. We have considered the submissions made by the learned counsels for the parties.

13. It is not denied by the learned counsel for the petitioner that on similar issues, demands have been raised against the petitioner for the

Assessment Years 2012-13 and 2013-14 which have been challenged by the petitioner before the CIT(A). The impugned Order dated 26.08.2021 has been passed by the respondent no.1 in purported compliance with the order dated 19.03.2021 of this Court, holding that the jurisdictional conditions precedent for invoking Section 201 of the Act are satisfied. As the petitioner has already availed of its remedies of appeal in relation to two AYs, we do not deem it proper to entertain the present petitions challenging the said finding of the respondent no. 1, at this stage. It will be open to the petitioner to challenge the final order passed by the respondent no.1 fastening any liability on the petitioner under Sections 201(1) and 201(1A) of the Act, including on the grounds that have been taken in the present petitions, by way of an appeal in accordance with the Act.

14. We make it clear that we have not expressed any opinion on the merits of the submissions made by the learned counsels for the parties and all such submissions shall remain open to be adjudicated in appropriate proceedings.

15. In view of the above, the present petitions are dismissed granting leave to the petitioner to avail of its alternate efficacious remedy, if so advised.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 30, 2021

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