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

+ **W.P.(C) 11921/2021**

DECCAN HOLDINGS B V

..... Petitioner

Through **Mr.Deepak Chopra, Advocate.**

versus

INCOME TAX OFFICER & ANR.

..... Respondents

Through **Mr.Ruchir Bhatia, Advocate.**

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Date of Decision: 25th October, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the certificate dated 29th September, 2021 as well as the order dated 12th August, 2021 (the correct date being 29th September, 2021) issued by the first Respondent. Petitioner seeks directions to the Respondents to issue a fresh certificate under section 197 of the Income Tax Act, 1961 [the Act] permitting the Petitioner to receive dividend of Rs. 65.68 crores for Financial Year 2021-22 subject to deduction of tax at the rate of 5% in terms of the India Netherlands DTAA read with the Protocol and MFN clause.

2. Learned counsel for the petitioner states that the petitioner is a company incorporated under the laws of Netherlands and is engaged in the business of acquiring strategic ownership interests, owning and disposing

ownership interests in other companies and enterprises, both in Netherlands and abroad with a primary focus on the food and agriculture, agro-chemicals, specialty chemicals, agri-technology (Ag-Tech) and pharmaceuticals sector. He states that the Petitioner holds 58.39% of the shares of Deccan Fine Chemicals (India) Private Limited [DFCPL]. He further states that during the current Financial Year (“FY”) i.e. 2021-22, DFCPL proposes to distribute a dividend of INR 65.68 cr. to the Petitioner.

3. Learned counsel for the Petitioner states that the Petitioner filed an application dated 13th August, 2021 under Section 197 of the Act before the Assessing Officer (AO) requesting him to issue a certificate authorizing the Petitioner to receive dividend income from DFCPL subject to lower withholding tax rate of 5% as applicable under the Double Taxation Avoidance Agreement (“DTAA”) between India and Netherlands read with the Protocol. He submits that the Protocol to India Netherlands DTAA provides for “Most Favoured Nation” (“MFN”) clause in terms of which when India enters into a DTAA with another member country of the Organisation for Economic Cooperation and Development (“OECD”) wherein India limits its tax deduction at source (“TDS”) to a lower rate than the one agreed between India and Netherlands, then from the date such agreement comes into force, the rates or scope contemplated in such other treaty shall apply to India-Netherlands DTAA. He states that though the India-Netherlands DTAA prescribes a withholding rate of 10%, yet as India has entered into DTAA with other OECD member countries being Slovenia / Lithuania / Colombia wherein tax rate on dividend income was agreed at a lower rate of 5%, owing to the MFN clause, the lower withholding rate shall also be applicable to any dividend income covered under the India-Netherlands DTAA. He further states that the Petitioner’s application to

withhold tax at a lower rate was rejected vide the impugned orders and a certificate issued under Section 197 of the Act at the rate of 10% was issued to the Petitioner.

4. Learned counsel for the Petitioner states that the issue involved in the present writ petition is no longer *res integra* as it is covered by the judgment of this Court in ***Concentrix Services Netherlands B.V. v. ITO (TDS)***, ***W.P.(C) 9051/2020 [2021] 127 taxmann.com 43 (Delhi)*** and ***Nestle SA v. Assessing Officer, Circle (International Taxation)***, ***W.P.(C) 3243/2021***. He states that the impugned order and certificate have been passed in contravention of the settled position of law. He further states that the Respondent cannot disregard the binding judgments of this Court on the ground that the revenue proposes to file an appeal against such decisions.

5. Issue notice. Mr.Ruchir Bhatia, Advocate accepts notice on behalf of the Respondents. He admits that the issue raised in the present writ petition is squarely covered in W.P.(C) No.9051/2020 titled ***Concentrix Services Netherlands*** (supra). Accordingly, the impugned order and certificate are set aside.

6. Consequently, a certificate under Section 197 of the Act will be issued in favour of the Petitioner, indicating therein, that the rate of tax, on dividend, as applicable qua the Petitioner is 5% under India-Netherlands DTAA.

7. The writ petition is disposed of in the aforesaid terms.

MANMOHAN, J

NAVIN CHAWLA, J

OCTOBER 25, 2021
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