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

Date of Decision: 22th December, 2021

+ **W.P.(C) 14714/2021 & CM APPL. 46330-31/2021**

COURSERA INC

..... Petitioner

Through: Ms.Kavit Jha, Mr.Himanshu
Aggarwal & Mr.Udit Naresh,
Advs.

versus

INCOME TAX OFFICER TDS 1(2)(1) & ORS.

..... Respondents

Through: Mr.Sunil Agarwal, Sr. Standing
Counsel with Mr.Tushar Gupta,
Jr. Standing Counsel &
Mr.Samarth Chaudhari, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the order dated 27.09.2021 and certificate dated 23.09.2021 issued by Respondent No.1, under section 197(1) of the Income Tax Act, 1961 ('the Act'). Petitioner seeks directions to the Respondents to issue certificate with 'NIL' deduction of income tax in favour of the Petitioner for financial year 2021-22.

2. Learned counsel for the Petitioner states that the impugned order dated 27.09.2021 rejecting Petitioner's application for NIL deduction directing the customers of the Petitioner to withhold tax @ 10% is arbitrary and no reason has been given in the order for arriving at such a conclusion. She states that the Petitioner acts merely as an aggregator of educational institutions making access to various courses easier and that upon successful completion of the course, a certificate to this effect which bears the seal of the institution concerned is awarded to the student.

3. She further states that the Petitioner being a tax resident of USA, has no PE in India and so business profits arising to the Petitioner in India are not liable to tax in India. She also states that the gross receipts of the petitioner can neither be characterised as Royalty nor Fees for included services ('FIS') in terms of Article 12 of India-USA Double Tax Avoidance Agreement ('DTAA'). The Petitioner has not transferred any copyright to its customers as there is no right to commercially exploit the content hosted on the e-platform and/or the services rendered are technical or consultancy in nature. She also submits that the Petitioner has already submitted itself to the Indian Tax jurisdiction by paying Equalisation levy @ 2% in terms of the Finance Act, 2020 and the entire receipts of the Petitioner relates only to the e-commerce activity.

4. Per Contra learned Counsel for the Revenue has drawn our attention to the provisions of section 10(50) of the Act, amended with effect from 1st April, 2021, which reads as under:

“Any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force [or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, [2020]] and chargeable to equalisation levy under that Chapter.

[Explanation 1.—For the removal of doubts it is hereby clarified that the income referred to in this clause shall not include and shall be deemed never to have been included any income which is chargeable to tax as royalty or fees for technical services in India under this Act read with the agreement notified by the Central Government under section 90 or section 90A.....”

5. Mr.Agarwal submits that after amendment of section 10(50) of the Act by Finance Act 2021 w.e.f.01-04-2021, the concept of apportionment of receipts has been introduced. Therefore, out of the total amount of receipts of the petitioner, the amount characterised as royalty or fees for technical services will be chargeable to tax under the Act read with provisions of applicable DTAA as royalty and/or fee for technical services for the purposes of TDS under section 195 of the Act. Balance amount, if any, will be chargeable to Equalisation Levy.

6. After hearing the counsels for parties, this court finds the Impugned Order in the initial part records as under:-

“That the receipts from Indian customers are not chargeable to tax as royalty/FTS under the provisions of the Act read with India US tax treaty. Since, the assessee has been suo moto paying equalization levy @2% on receipts from Indian customer and has filed

copies of Equalisation Levy challans as evidence, such receipts may be subjected to TDS under section 195 of the Act @4% keeping in the interest of Revenue. This recommendation is made owing to the limited frame work of nature of proceedings under section 197”

7. However, the petitioner has been directed to deduct TDS @ 10% on the entire amount. There is no reasoning as to how the rate finally granted has been arrived at.

8. The Impugned Order does not take into account the impact, if any, of the amendment carried out to section 10(50) of the Act by Finance Act 2021 w.e.f. 01-04-2021. The said amendment states that the amounts taxable as royalty/fees for technical services under the Act read with section 90/90A of the relevant double taxation avoidance agreement [DTAA] will not be exigible for being considered for the charge of Equalisation Levy.

9. The Petitioner in its application for certificate under section 197 dated 23.09.2021 describes itself as an e-platform operator. In the later part of the same application the petitioner claims itself to be a university for the purposes of article 12(5)(c) of the DTAA between India and United States of America. The AO, in the Impugned Order holds the Petitioner is not eligible for the benefit of article 12(5) (c) of the DTAA. However, the Impugned Order does not contain any reasoning or discussion on the applicability or otherwise of various sub-articles of the DTAA to the fact situation of the case.

10. Consequently, the impugned order dated 27.09.2021 is hereby set aside with a direction to the Respondent No. 1 to pass a de novo reasoned order after taking into account the amendments made to the provisions of section 10(50) of the Act w.e.f. 01.04.2021 i.e. to exclude the receipts of the Petitioner which is subject to withholding tax at source to the extent such receipts are exigible to Equalisation Levy within a period of 4 weeks after granting opportunity of being heard to the petitioner. It will be incumbent upon the petitioner to furnish to the Assessing Officer the information required by the Assessing Officer expeditiously.

11. It is clarified that this court has not expressed any opinion on the merits of the case. Needless to say all contentions of either side are left open.

12. Instant petition is disposed of in the above terms.

Liberty is granted to parties to approach this Court in case the need arises.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 22, 2021/rv