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

NEUTRAL CITATION NO: 2022/DHC/001086



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Decision delivered on: 25.03.2022

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W.P.(C) 13188/2021 & CM APPL. 41597/2021

GE ENERGY PARTS INC

.....Petitioner

Through : Mr Sachit Jolly, Mr Rohit Garg, Ms
Disha Jham, Ms Mehak Sachdeva and Mr
Sohum Dua, Advs.

Versus

ASSISTANT COMMISSIONER
OF INCOME TAX & ORS.

..... Respondents

Through : Mr Puneet Rai, Sr. Standing Counsel
with Ms Adeeba Mujahid, Jr. Standing
Counsel.

W.P.(C) 13189/2021 & CM APPL. 41599/2021

GE GLOBAL PARTS AND PRODUCTS GMBH Petitioner

Through : Mr Sachit Jolly, Mr Rohit Garg, Ms
Disha Jham, Ms Mehak Sachdeva and Mr
Sohum Dua, Advs.

Versus

ASSISTANT COMMISSIONER OF
INCOME TAX & ORS.

..... Respondents

Through : Mr Puneet Rai, Sr. Standing Counsel
with Ms Adeeba Mujahid, Jr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE JASMEET SINGH

[Physical Court Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The above-captioned writ petitions are directed against the order(s) dated 23.09.2021, passed by the Assessing Officer (AO) in respect of the

application(s) preferred by the petitioners under Section 197 of the Income Act, 1961 [in short “the Act”]. To be noted, the said application(s) relate to Financial Year (FY) 2021-2022.



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1.1. The purpose with which the aforementioned application(s) were preferred by the petitioners for the FY 2021-2022, was that the payer should not withhold any money towards tax i.e., the withholding tax should be pegged at “Nil” rate.

1.2. *Via* the impugned order(s), the AO has concluded that the withholding tax rate should be pegged at 4%.

2. Mr Sachit Jolly, who appears on behalf of the petitioners, submits that the order passed by the AO is wholly erroneous, as, in another proceedings carried on before the Income Tax Appellant Tribunal [in short “the Tribunal”] i.e., ITA No.671 (Delhi) of 2011 concerning the petitioner in W.P.(C) 13188/2021 i.e., GE Energy Parts Inc., the Tribunal has attributed the profits to the Permanent Establishment (PE) of the petitioner therein in India, at the rate of 26%. The said judgment of the Tribunal is dated 27.01.2017.

2.1. According to Mr Jolly, the Revenue cannot, in the very least, veer away from this position/principle, although the petitioners continue to maintain that they have no PE in India.

2.2. Therefore, if the rate of attribution of profits to the PE in India is pegged at 26%, then the withholding rate of tax cannot exceed 1.04%.

2.3. It is, therefore, Mr Jolly’s contention that the conclusion reached, *via* the impugned order, by the AO that the withholding rate of tax should be 4%, is completely unsustainable. It is Mr Jolly’s contention that this aspect of the matter has not been dealt with by the AO in the impugned order.

2.4. Furthermore, Mr Jolly says that the view taken by the AO that the petitioners have artificially split their contracts with various entities in India cannot improve the cause of the respondents/revenue, for the reason that those entities have already paid the requisite tax demanded of them.

3. On the other hand, Mr Puneet Rai, who appears on behalf of the

respondents/revenue, has relied upon the impugned order(s) i.e., order(s) d

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23.09.2021, to support his contention that the conclusion reached by the AO is valid and legally tenable.

3.1. Mr Rai, however, cannot but accept the fact that in the earlier proceedings, to which we have made a reference above, the profitability attributed to the PE, said to be located in India, and connected to the petitioners, is 26%. If that figure is taken into account, then surely the withholding rate of tax cannot exceed 1.04% [26% x 10% x 40%].

3.2. However, Mr Jolly says that since the FY is coming to an end, at this juncture, he does not wish to press the above-captioned writ petitions, but would file a fresh application before the AO for F.Y. 2022-2023.

3.3. Mr Jolly says that, if such an application is filed, the petitioners would like the AO to deal with the contentions raised in the writ petitions.

4 Therefore, while closing the present writ petitions, we wish to observe that in case the petitioners were to move an application under Section 197 of the Act for FY 2022-2023, and if the contentions raised in the writ petitions form part of the said application, including what is noted hereinabove by us with regard to the attribution of profits to the PE, the same will be dealt with by the AO, as per law.

5. At this stage, Mr Jolly says that the petitioners will move an application for the F.Y.2022-2023, within four weeks of receipt of a copy of this order. In case, such an application is moved, the AO will dispose of the same within four weeks of the receipt of the application.

6. Needless to add, the aforesaid observations will not impact the decision that the AO would take qua the fresh application. The AO will take a decision in the matter, after affording a hearing to the petitioners, in support of the application.

7. Parties will act, based on the digitally signed copy of this order.

8. The writ petition(s) are disposed of in the aforesaid terms.

9. Consequently, pending application(s) shall stand closed.

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RAJIV SHAKDHER, J

JASMEET SINGH, J

MARCH 25, 2022/aj

[Click here to check corrigendum, if any](#)

