

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-2453-2023

Date of Decision:-20.07.2023

Coforge Solutions Pvt. Ltd.

....Petitioner

vs.

Dy Commissioner of Income Tax (TDS) Gurugram

....Respondent

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rohit Jain, Advocate and Mr. Vishal Gupta, Advocate
for the petitioner

Mr. Sukant Gupta, Sr. Standing counsel, for the respondent.

Ritu Bahri, J.

1. The petitioner-assesee has approached this Hon'ble Court by filing the present writ petition for issuance of a writ in the nature of certiorari for quashing order dated NIL (received by the petitioner on 18.01.2023) passed under Section 197 of the Income Tax Act, 1961 (for short 'Act 1961') rejecting the application filed for issuance of lower tax deduction certificate under Section 197 read with Rules 28AA of the Income Tax Rules, 1962 (for short 'Rules 1962') and directing the respondent to issue lower tax deduction certificate under Section 197 of Act 1961.

2. Brief facts of the case as culled out from the petition are that the petitioner-company is engaged in the business of providing support services relating to information technology and information

technology enabled services namely, customer call centres, data processing, business outsourcing, business development for all sorts of services relating to software, digital, mobile technologies and their maintenance, repairs, programs and operations, for industrial, commercial, domestic, defence, government and other general customers or sections of society. Petitioner is a company incorporated in India under the Companies Act, 2013 on 29.06.2022 Copy of Certificate of Incorporation issued by Ministry of Corporate Affairs is Annexure P-2.

3. On 31.12.2022, the petitioner-company had filed an application under section 197 of the Act 1961 for issuance of certificate of lower deduction of tax on the amounts/sums receivable by it for the months of January 2023 to March 2023. It had submitted Form 13 wherein the estimate total income and tax liability for the financial year 2022-23 was computed as under:

Particulars	Amount (in Rs.)
Estimated total income of the previous year	3,15,00,000
Total tax including interest payable on the income	79,28,550

4. The petitioner subsequently submitted the details of prepaid taxes already paid/deducted for the financial year 2022-23, which are as follows:-

Particulars of prepaid tax	Amount of tax already paid (in Rs.)
Advance Tax	20,00,000/-
Total tax deducted at source	1,94,50,047/-

5. It was submitted that since the total tax deducted/deposited by the petitioner was the sum of Rs. 2,14,50,047/- which was much higher than the total estimated tax liability of Rs. 1,12,75,264/- for financial year 2022-23 (ie. assessment year 2023-24), therefore, no further deduction of tax was required on the amounts receivable by it from its customers. The respondent had sought certain clarifications on the application as moved by the petitioner and in response to the same, the petitioner filed reply on 09.01.2023 and furnished copies of required documents. The respondent thereafter passed the impugned order dated NIL which was received by the petitioner on 18.01.2023. The application filed by the petitioner was rejected by the respondent on the ground that its financial statements for the last years were not available and therefore, the estimated tax to turnover ratio could not be determined by the respondents to arrive at the lower rate of tax. The petitioner has challenged the validity of this order on the ground that since it was incorporated only on 29.06.2022 and the said year being first year of its existence, it could not furnish financial statements of last years. The respondent also failed to appreciate the parameters mentioned in Rule 28AA(2) Rules 1962, which were not mandatory and are only directory in nature. It is submitted that the act of respondents in/or declining the request of the petitioner to issue NIL withholding certificate, was grossly perverse, erroneous & unsustainable in the eyes of law, as when the financial statements of the petitioner for the previous years were not there, then the respondent-assessing officer was required to determine the tax rate by applying either the parameters under Rule 28AA(2) of Rules 1962 or by applying any independent calculation method and could not reject the application of the petitioner on the ground of non-

providing of previous financial statements. All the necessary details required for determining the estimated tax liability of the petitioner for the financial year 2022-2023 and for arriving at lower rate of deduction of tax had already been furnished and the petitioner was willing to furnish any other information that might have been required by the respondent. Without giving any opportunity of hearing to the petitioner, the impugned order had been wrongly passed. It is also submitted that while passing the impugned order, no approval was obtained by the respondent from the administrative superior authority, which was also contrary to the mandate of law. Therefore, prayer has been made by the petitioner for issuance of writ in the nature of certiorari for quashing the impugned order dated Nil received by the petitioner on 18.01.2023 thereby rejecting the application filed by it and further prayer of the petitioner is for directing the respondent to issue lower tax deduction certification under Section 197 of Act, 1961.

6. On notice of the petition, the respondent filed reply taking preliminary objections as to maintainability of the writ petition by alleging that the petitioner had alternative remedy available to it to assail impugned order dated dated 31.12.2022 (P-1) and since it had not filed the statutory appeal, therefore, the present petition was not maintainable. It has further submitted that no prejudice would be caused to the petitioner since it would be entitled to get refund of the excess tax paid and as the decision of the Assessing Officer on collection/deduction of tax at source at a reduced rate was not a final decision and binding on the department and was also subject to the appellate/revisional jurisdiction and, therefore, the writ petition filed by the petitioner challenging the

opinion of the Assessing Officer which at best could be stated to be prima facie opinion, was not maintainable.

7. On merits, it was asserted that the impugned order was passed after following the due procedure of law and conditions as laid out under Rule 28AA of the Rules, 1962 and application was rejected due to deficiency of the parameters, which were required to be satisfied by the petitioner.

8. It was argued by learned counsel for the petitioner that the impugned order dated 31.12.2022 was liable to be reversed as it was passed without appreciating the information furnished by the petitioner and has been passed in complete disregard of the mandate of Rule 28AA of Rules 1962. The respondent had failed to consider all the relevant parameters prescribed under Rule 28AA and had proceeded to reject the application of the petitioner by solely relying upon a single parameter, which was totally irrelevant and without appreciating the facts and the reasoning given by the petitioner. Hence he argued that the writ petition deserves to be accepted and to fortify his argument, learned counsel for the petitioner has relied upon judgment in a case of ***State of Maharashtra vs. Greatship (India) Ltd AIR 2022 SC 4408*** and this judgment was followed by Hon'ble the Supreme Court of India in the cases of ***State of Madhya Pradesh vs. Commercial Engineers and Body Building Co. Ltd AIR Online 2022 SC 834*** and ***Commissioner of Income Tax vs. Chhabil Dass Aggarwal, (2013) 357 ITE 357 (SC)***.

9. On the other hand, learned counsel for the respondent-revenue argued that the statutory remedy of appeal was available to the petitioner against the impugned order and therefore, the present writ petition could not be stated to be maintainable. He further argued that

even otherwise, the petitioner had failed to make out a case for issuance of Lower Tax Deduction Certificate as it had failed to fulfill the parameters required under Rule 28AA of Rules 1962. With these submissions, it was urged that the present petition is liable to be dismissed.

10. The assessee having challenged the order passed by the respondent by rejecting its prayer to issue Lower Tax Deduction Certificate under Article 226 of the Constitution of India and the Revenue having taken the objection as to maintainability of the writ petition, therefore, before proceeding further, we propose to deal with scope of interference in such a matter. The well settled proposition of law is that though the writ of prohibition or certiorari will not be issued against the Executive Authorities, the High Court has the power to issue the same in a fit case, where the condition precedent to the exercise of jurisdiction does not exist and an executive authority acts without jurisdiction. [Article 226](#) of the Constitution confers on the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted. The Supreme Court in various judgments, summarized the principles as to when the High Court can exercise such power by following six exceptions and they are as follows:

“(i) The power under [Article 226](#) of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under [Article 226](#) of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under [Article 226](#) of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion;

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

11. In the instant case, the petitioner has challenged the order (P-1) as passed by the respondents rejecting the prayer of the petitioner to issue Lower Tax Deduction Certification. As per Rule 28AA of the Rules, 1962, on an application made by a person for deduction of tax at lower rate or no deduction of tax, the Assessing Officer if satisfied that the estimated tax liability of a person justifies such deduction, the certificate can be issued, in accordance with provisions of Section 197 (1) of the Act, 1961. As per sub Rule 2 of Rule 28AA, the existing and estimated liability of such person shall be determined by the Assessing Officer after taking into consideration the tax payable of estimated income of the previous or relevant of the assessment year; the tax payable on the assessed or returned [or estimated income, as the case may be, of last four] previous years.

12. In the present case, the respondent had rejected the prayer of the petitioner to issue Lower Tax Deduction Certificate on the ground that the former had failed to file returns for the last 04 previous years to show the tax payable on the assessed or returned or estimated income for these years and in the absence of audited financial statements, thus, the turnover ratio of these years could not be ascertained to arrive at the rate of lower deduction. The claim of the petitioner is that since it had been newly incorporated on 29.06.2022, it had started its business from that date only, therefore, it was obviously not in a position to file returns for the last 04 previous years. He has referred to the judgment of Delhi High Court in a case of ***Manpowergroup Services India (P) Ltd vs. Commissioner of Income Tax (TDS)-I, New Delhi, {2021} 123 taxmann.com 290 (Delhi)*** to argue that since the order passed by the respondent could not be challenged by way of revision, therefore, this writ petition has been filed. In ***ManPowerGroup's case (supra)***, the assessee had filed an application for issuance of lower tax deduction certification under Section 197 of Act, 1961, which was rejected. It was held by Delhi High Court that since the impugned order was passed after seeking approval from the Commissioner, therefore, it could be challenged by way of revision before the Commissioner, therefore the writ petition was held to be maintainable despite the fact that the efficacious alternative remedy available to the petitioner to challenge the impugned order had not been availed.

13. Reference has further been made to judgment of Bombay High Court in a case of ***Larsen and Toubro Ltd vs. Assistant Commissioner of Income Tax (TDS) 2 (1)*** wherein prayer of the

petitioner to issue certification for deduction at lower rate had been rejected by Assistant Commissioner of Income Tax. The petitioner then filed a revision under Section 264 of the Act which too was rejected by the Commissioner of Income Tax (TDS), it was thereafter the petitioner approached the High Court and his appeal was allowed as the petitioner had approached the High Court after exhausting efficacious remedy before the authorities under the Act, 1961.

14. In the instant case, the position can be said to be different. The alternative efficacious remedy by way of filing an appeal challenging the impugned order was very much available with the petitioner but it has not chosen to avail the same. In ***Greatship India Ltd's case (supra)***, Hon'ble the Supreme Court has held that where the statutory remedy of appeal was available to the petitioner against the assessment order passed by the Assessing Officer, the High Court ought to have relegated the assessee to avail the alternative remedy, instead of exercising its jurisdiction under constitutional provisions. In ***Chhabil Dass Aggarwal's case (supra)***, Hon'ble the Supreme Court had made similar observations.

15. In the present case, the petitioner has not been able to plead or make out any case to show that there was any violation of principle of natural justice on the part of the respondent while passing the impugned order or there was lack of jurisdiction or procedure required for decision had not been adopted. As such, in our considered opinion, the petition cannot be entertained being not maintainable, as it has been filed by the petitioner without exhausting the alternative efficacious remedy of law, as available to it.

16. With these observations, the writ petition is dismissed. However, we relegate the petitioner to approach the appropriate authority to avail the alternative remedy in accordance with law and the concerned authority shall dispose of the proceedings initiated before it after giving opportunity of hearing to the petitioner.

(RITU BAHRI)
JUDGE

20.07.2023
G Arora

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No