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

% ***Date of decision: 16.03.2023***

\+ **W.P.(C) 1346/2023 & CM APPL. 5054/2023**

MATRIX CELLULAR INTERNATIONAL (SERVICES) PRIVATE ..... Petitioner

Through: Mr Manuj Sabharwal, Mr Nakul Sehgal, Mr Rohit Gupta & Mr Abhishek Anand, Advs.

versus

DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE 16(1), DELHI & ORS. ..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing Counsel with Mr Akshat Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. On the previous date i.e., 02.02.2023, we had heard the matter, and broadly etched out the controversy at hand.

2. For the sake of convenience, the relevant part of the said order is extracted hereafter:

> *"2. This writ petition is directed against the notice dated 27.03.2022 issued under Section 148 of the Income Tax Act, 1961 [in short, "the Act"].*
> *2.1 Besides this, challenge is also laid to the order dated 25.03.2022 passed under Section 148A(d) of the Act.*
> *2.2 To be noted, the impugned notice and order concern Assessment Year (AY) 2018-2019.*
> *3. The principal allegation against the petitioner is, that it had made remittances amounting to Rs. 3,90,60,090/- without subjecting it to*

withholding tax, and hence, the said amount is liable to be disallowed under Section 40(a)(i) of the Act.
4. Counsel for the petitioner has drawn our attention to the fact, that proceedings under Section 201(1)/201(1A) of the Act were initiated by the International Taxation Wing, which, however were closed upon receiving the petitioner's explanation as to the nature of the transaction.
5. It is the petitioner's case that it is not in the business of telecasting services.
6. According to the petitioner, it simply purchases SIM cards of telecom operators located outside India and sells the same to persons who travel from India to foreign locations. As per the petitioner, the income accrued to foreign telecom operators is not taxable in India.
7. It is the petitioner's case, that given these circumstances, tax at source had not been deducted.
8. Thus, as noted above, the petitioner claims that this explanation was accepted in the 201(1)/201(1A) proceedings.
9. In support of this plea, our attention has been drawn by the counsel for the petitioner to Annexure P-6 and P-7. [See pages 44, 45 and 46].
10. Issue notice.
10.1 Mr Abhishek Maratha accepts notice on behalf of the respondents/revenue.
11. Mr Maratha says that he will return with instructions.
12. In case instructions are received to resist the writ petition, counter affidavit will be filed before the next date of hearing.
13. List the matter on 16.03.2023.
14. In the meanwhile, there shall be a stay on the operation of the impugned notice and order till the next date of hearing."

3. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the respondents/revenue, has returned with instructions.

3.1 According to Mr Maratha, the respondents/revenue will drop the proceedings, in view of the facts brought on record on 06.02.2023, by the Jurisdictional Assessing Officer.

4. Mr Maratha says, that this stand has been taken, with a caveat, that the interim order granted by this Court is vacated.

5. According to us, the plea for vacating the stay is unnecessarily conflated with the stand, that the respondents/revenue is willing to drop the proceedings.

6. Clearly, the interim order dated 02.02.2023 can continue, only till the stage when a decision is taken to drop the proceedings. Axiomatically, the interim order would stand vacated, once the proceedings are dropped.

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

8. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 16, 2023/SA

Click here to check corrigendum, if any