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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Reserved on: 02.11.2023**

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Delivered on: 07.11.2023+ **W.P.(C) 11877/2023****SHREYASH RETAIL PRIVATE LTD** PetitionerThrough: Mr. Tarun Gulati, Senior Advocate
with Mr. Kishore Kunal and Ms.
Ankita Prakash, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX TDS CIRCLE
77(1) & ANR. RespondentThrough: Mr. Sanjay Kumar, Ms. Easha, Ms.
Hemlata Rawat, Standing Counsels
for Income Tax Departments.**CORAM:**
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**J U D G M E N T****SATISH CHANDRA SHARMA, C.J.**

1. *Vide* the present writ petition, the Petitioner i.e., a company incorporated under the Companies Act, 2013 engaged in the business of retail trade of goods through e-commerce platforms seeks to challenge a



certificate dated 29.05.2023 issued by Respondent No. 1 i.e., the Deputy Commissioner of Income Tax TDS Circle 77(1) rendered under Section 197 of the Income Tax Act, 1961 (the “**IT Act**”) (the “**Impugned Order**”) read with a letter dated 29.05.2023 addressed to the Petitioner by Respondent No. 1 (the “**Impugned Letter**”) (hereinafter, the Impugned Order and the Impugned Letter shall, collectively be referred to as the “**Impugned Actions**”).

2. The facts of this case reveal that the Petitioner filed application an application dated 01.03.2023 under Section 197 of the IT Act along with Form-13 of the Income Tax Rules, 1961 (the “**IT Rules**”) seeking a lower deduction of tax certificate (“**LDC**”) *vis-à-vis* the deduction of Tax Deducted at Source (“**TDS**”) at a rate of 1% (one per cent) under Section 194O of the IT Act for Financial Year (“**FY**”) 2023-2024 (the “**Application**”).

3. Pertinently, the Petitioner *vide* the Application, sought issuance of an LDC granting the Petitioner the relief of deducting TDS at a rate of 0.01% (zero point zero one per cent). Thereafter, on (i) 03.03.2023; (ii) 16.03.2023; and (iii) 01.04.2023, certain queries were raised by Respondent No. 1 seeking, *inter alia*, details of the nature of business activity undertaken by the Petitioner, details of previous issuance of LDCs, financial statements for identified FYs, copies of income tax returns (“**ITRs**”), details of advance tax, details of outstanding tax demands to the tune of (i) INR 21,71,356; and (ii) INR 60990 etc. In this regard it is stated that Petitioner had responded to the above queries *vide* correspondence dated (i) 03.03.2023; (ii) 18.03.2023; and (iii) 13.04.2023.



4. Furthermore, the Petitioner *vide* authorized representative visited the office of Respondent No.1 on 18.04.2023 and submitted *inter alia* that the Petitioner ought to be granted an LDC on account of the fact that:

- a) The Petitioners' projected tax to turnover ratio being 0.012% (zero point zero one two per cent) i.e., significantly lower than TDS to be deducted at a rate of 1% (one per cent);
- b) The Petitioners' projected tax liability extended to a mere sum of INR 1,04,00,000 (Indian Rupees One Crore Four Lakh) as against a projected revenue from operations of INR 8810,00,00,000 (Indian Rupees Eight Thousand Eight Hundred Ten Crore);
- c) In FY '19-20, '20-21 and '21-22 the tax to turnover ratio of the Petitioner was 0.01% (zero point zero one per cent); and
- d) That the Petitioner has projected a tax refund to the extent of INR 45,05,00,000 (Indian Rupees Forty Five Crore Five Lakh) under a 0.5% (zero point five per cent) rate of deduction of TDS.

5. Thereafter, on 19.04.2023 certain additional queries were raised by Respondent No. 1 in relation to discrepancies between the projected gross turnover of the Petitioner for FY '22-23. The same was duly responded to by the Petitioner *vide* a reply dated 24.04.2023. Further, the aforementioned queries were reiterated by Respondent No. 1 on 12.05.2023. *Vide* a reply dated 17.05.2023, the Petitioner reiterated that projected turnover for FY '22-23 saw variation on account of the phasing out of sale of identified non-profitable products. Accordingly, it was stated that though the Petitioners' turnover had reduced, the overall profitability exceeded the Petitioners' projections.



6. Subsequently, the Impugned Actions came to be issued by Respondent No. 1 whereunder the Petitioner was issued an LDC to the Petitioner permitting the deduction of TDS at a rate of 0.5% (zero point five per cent) as against 0.01% (zero point zero one per cent) sought for by the Petitioner under the Application.

7. The principal argument raised by Mr. Tarun Gulati, learned Senior Counsel appearing on behalf of the Petitioner, is that the Impugned Actions have come to be issued mechanically, without following the mandate of Rule 28AA of the IT Rules. In this regard, Mr. Gulati places reliance on *Camions Logistics Solutions (P) Ltd. v. CIT*, 2020 SCC OnLine Del 1821.

8. Furthermore, it has been vehemently contended that the Impugned Order is non-speaking and accordingly, ascribes no reasons qua the rejection of the Application seeking the grant of an LDC permitting the deduction of TDS at a rate of 0.01% (zero point zero one per cent).

9. Mr. Sanjay Kumar, learned Standing Counsel appearing on behalf of the Respondents has vehemently contended before this Court that the issuance of an LDC is not a matter of right and that the issuance of an LDC is an exception to the rigors of Section 192-195 of the IT Act. Accordingly, he submits that the onus to justify the grant of relief under Section 197 of the IT Act falls squarely upon the Petitioner, which according to him has not been appropriately discharged.

10. Accordingly, it has been contended that (i) the projected accounts of the Petitioner for FY '22-23 were found to be unreliable; (ii) the Petitioner has a history of TDS default; and (iii) the rate of TDS requested by the Petitioner i.e., 0.01% (zero point zero one per cent) is wholly unreasonable.



11. We have heard the counsel(s) for the parties and perused the documents placed on record.

12. Pertinently, this Court *vide* an order dated 06.09.2023 came to a *prima facie* observation qua the Impugned Certificate read with the Impugned Letter, that Respondent No. 1 set forth no reasons whatsoever as to why the Petitioners' request that TDS should be deducted at a rate of 0.01% (zero point zero one per cent) ought not to be accepted. Further, at the request of Mr. Sanjay Kumar, Learned Standing Counsel, an opportunity was granted to the Respondents to file a counter-affidavit in the matter which would furnish reasons as regards the conclusion arrived at in the Impugned Order. However, this Court specifically observed therein that the Impugned Order must stand on its own legs, and accordingly, the reasons furnished by way of a counter-affidavit could not be supplanted into the Impugned Order.

13. At this juncture it would be apposite to refer to the decision of the Hon'ble Supreme Court of India (the "**Supreme Court**") in ***Mohinder Singh Gill v. Chief Election Commr.***, (1978) 1 SCC 405 wherein the Supreme Court rejected the notation of supplementing reasons in relation to an executive order by way of an affidavit. The relevant extract is reproduced as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :



“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

14. Accordingly, this Court is of the considered opinion that the principle enunciated in ***Mohinder Singh Gill (Supra)***, is applicable to the case herein. Therefore this Court must consider whether the Impugned Order read with the Impugned Letter, is a speaking and well-reasoned order so as to satisfy the mandate of Rule 28AA of the IT Rules, devoid of the reasons furnished by the Respondents before this Court *vide* its counter affidavit.

15. We have perused the Impugned Order read with the Impugned Letter and we find that the reasons furnished by the Respondent No. 1 qua the Application i.e., as to why the Petitioners’ request that TDS should not be deducted at a rate of 0.01% (zero point zero one per cent), hinges on broad generalizations in relation to the propriety of projected estimations of revenue and tax liability, and accordingly has been has been issued mechanically reflecting non-application of mind.

16. Accordingly, following ***Camions Logistics Solutions (P) Ltd. (Supra)*** this Court find that the Impugned Order read with the Impugned Letter suffers from non-application of mind which would certainly result in grave



prejudice to the Petitioner. Thus, we set aside the Impugned Actions and remand the matter back to Respondent No. 1 to conduct a fresh determination of the Application in accordance with law as expeditiously as possible.

17. With the aforesaid directions, the writ petition is allowed, and the pending application(s) (if any) stand disposed of.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

NOVEMBER 7, 2023