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

\+ W.P.(C) 9023/2022

PEPSICO INDIA HOLDINGS PRIVATE LIMITED .....Petitioner

Through: Mr. Vishal Kalra and Mr. S.S. Tomar, Advocates.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1), DELHI & ANR. .....Respondents

Through: Mr. Aseem Chawla, SSC, Ms. Monica Benjamin, JS, Ms. Priya Sarkar, JSC and Ms. Pratishtha Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **11.11.2024**

1. The petitioner has filed the present petition *inter alia* impugning a notice dated 25.04.2022 issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment year (AY) 2018-19. The impugned notice was preceeded by an order dated 25.04.2022 passed under Section 148A(d) of the Act.

2. The Assessing Officer (hereafter *the* AO) had listed out certain transactions which entailed payment to foreign entities aggregating ₹58,37,22,743/-. Deductions as expenses in respect of the said payments were sought to be disallowed on the ground that the petitioner had not deducted withholding tax on the said remittances.

3. It is the petitioner's case that the proceedings for failure to deduct tax at source under Section 201 of the Act were commenced separately. According to the petitioner, it was not required to deduct tax at source. The petitioner submits that this issue was examined and concluded in favour of the assessee in those proceedings. The conclusion of the concerned authorities militates against the reopening of the assessment under Section 148 of the Act for the said purpose. In this regard, this Court had, on 18.10.2024, passed the following order:

> "1. The petitioner has filed the present petition, inter alia, impugning a notice dated 25.04.2022 issued under Section 148 of the Income Tax Act, 1961 (hereafter the Act). The impugned notice has been issued on the basis that the petitioner would not be entitled to deduction of certain expense on account of non-deduction of Tax Deducted at Source (hereafter TDS).
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> 2. It is the case of the petitioner that it was not liable to deduct tax in respect of the said payments. The petitioner further states that the petitioner's contention has been accepted by the concerned Officer, who was considering the petitioners failure to deduct tax at source and the said proceedings have been dropped.
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> 3. The petitioner has also produced an image of screen shot indicating the status of those proceedings.
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> 4. Considering that the proceedings have been closed on determining that the petitioner was not required to deduct TDS, prima facie, the impugned notice is also required to be set aside.
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> 5. Mr. Chawla, the learned counsel appearing for the Revenue seeks time to take instructions in this regard.
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> 6. List on 11.11.2024."

4. Mr. Chawla, the learned counsel appearing for the Revenue states, on instructions, that the impugned notice may be set aside as the contentions advanced by the petitioner have since been verified. It has been confirmed that the proceeding for not withholding tax have since been dropped.

5. In view of the above, the present petition is allowed. The impugned notice dated 25.04.2022 issued under Section 148 of the Act in respect of AY 2018-19 is set aside.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 11, 2024

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Click here to check corrigendum, if any