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

\+ W.P.(C) 11578/2024 and CM APPL. 48140/2024 (Stay)

GE GLOBAL PARTS AND PRODUCTS GMBH
.....Petitioner

Through: Mr. Sachit Jolly, Ms. Disha Jham, Ms. Soumya Singh, Mr. Devansh Jain, Advs.

versus

INCOME TAX OFFICER, WARD 1 3 2, INTERNATIONAL TAXATION, NEW DELHI & ORS. .....Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel and Mr. Ashvini Kumar, Mr. Rishabh Nangia, Jr. Standing Counsels with Mr. Nikhil Jain, Adv. for Income Tax Department

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\+ W.P.(C) 11688/2024 and CM APPL. 48617/2024 (Stay)

GE ENERGY PARTS INC .....Petitioner

Through: Mr. Sachit Jolly, Ms. Disha Jham, Ms. Soumya Singh, Mr. Devansh Jain, Advs.

versus

INCOME TAX OFFICER, WARD 1 3 2, INTERNATIONAL TAXATION, NEW DELHI & ORS. .....Respondents

Through: Mr. Sunil Agarwal, Sr. Standing Counsel and Mr. Shivansh B. Pandya and Mr. Viplav Acharya, Jr. Standing Counsels with Mr. Utkarsh Tiwari, Adv. for Income Tax Department

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

<u>O R D E R</u>

% **14.11.2024**

W.P.(C) 11578/2024 and CM APPL. 48140/2024 (Stay)
W.P.(C) 11688/2024 and CM APPL. 48617/2024 (Stay)

1. These writ petitions have been preferred impugning the orders dated 19 June 2024 [W.P.(C) 11578/2024] and 29 May 2024 [W.P.(C) 11688/2024], pursuant to which the respondents while deciding an application for issuance of lower withholding tax certificates referrable to Section 197 of the **Income Tax Act, 1961**[1] required the petitioners to receive payments after deduction of tax at the rate of 4%. The writ petitions themselves pertain to **Financial Year**[2] 2024-2025.

2. While dealing with an identical question and while examining the validity of the view as taken by the respondents, namely of a withholding tax restriction at the rate of 4%, in a batch of writ petitions led by **GE Energy Parts Inc vs. Income Tax Officer Ward 1(3)(2), International Taxation & Ors.**[3], we had on hearing the learned counsels for respective sides ultimately allowed the writ petitions on 03 April 2024 while observing as follows:-

> "6. For FY 2021-22, the respondents issued a withholding tax certificate dated 23 September 2021 taking the same at 4% of the gross receipts. The aforesaid certificate came to be assailed by way of W.P.(C) 13188/2021 and which was disposed of by an order dated 25 March 2022 in the following terms:-
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> xxxx xxxx xxxx
>
> 7. The petitioner thereafter applied for withholding tax certificates for FY 2022-23 on 12 and 23 April 2022. The petitioner was accorded a personal hearing on 30 April 2022 pursuant to the directions issued by this Court while disposing of the aforenoted petition.
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> 8. It is thereafter that the impugned order came to be passed. We note that when the writ petition was entertained on 28 July 2022,

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[1] Act
[2] FY
[3] W.P.(C) No. 9593/2022 and other connected matters, decided on 03 April 2024

the Court had passed an interim order in the following terms:-

> "1. These writ petitions seek to challenge the order/certificate dated 13.05.2022, passed under Section 197 of the Income Tax Act, 1961 [in short "Act"].
>
> 2. As per the impugned order/certificate, the lower rate of withholding tax is pegged at 4%.
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> 3. The petitioner has not only made a prayer that the impugned order/certificate be set aside, but has also sought a direction that the certificate ought to have been issued at 'nil' rate.
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> 4. Besides this, the petitioner sought an alternative prayer, which is, that it would be willing to withhold tax at the rate of 1.5% during the pendency of the writ petition. This, admittedly, was the rate of withholding tax for the period spanning between Financial Year (FY) 2018-19 and 2020-21.
>
> 5. We may also note that in FY 2021-22, the rate of withholding tax was fixed at 4%.
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> 6. The petitioner had instituted a writ petition in this Court i.e., W.P.(C) 13188/2021, to assail the tax rate in the withholding certificate/order issued for 2021-2022, which was disposed of via order dated 25.03.2022, wherein the following was recorded:
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> xxx xxx xxx
>
> 7. Mr Sachit Jolly, who appears on behalf of the petitioner, contends that the aforementioned directions have not been followed while issuing the impugned order/certificate.
>
> 8. One of the aspects which has come to fore, is the order dated 27.01.2017 passed by the Income Tax Appellate Tribunal [in short "Tribunal"] in IT Appeal no.671 (Delhi) of 2011, wherein profits attributed to the petitioner have been pegged at 26%.
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> 8.1. This order of the Tribunal concerned the period spanning between Assessment Years (AYs) 2001-02 and 2008-09.
>
> 8.2. Mr Jolly informs us, that pursuant to the Tribunal's order, the Dispute Resolution Panel (DRP), via the order dated 05.05.2022, has accepted that profits could be attributed to the petitioner at the rate of 26%.
>
> 8.3. <u>Therefore, what is evident is that if the profit attribution rate applicable to the petitioner is kept at 26%, clearly the withholding rate of tax would get pegged at 1.04% [26% x 10% x 40%.]</u>

9. Mr Jolly, correctly points out, that via the impugned order, the profit attributed to the petitioner is 100%.

10. Messrs Sunil Agarwal and Puneet Rai, who appear on behalf of the respondents/revenue, on the other hand, say that the impugned order alludes to the fact that the petitioner has artificially split the subject contracts into offshore and onshore supplies.

11. It is also Messrs Agarwal and Rai's submission, that a rectification application under Section 154 of the Act has been filed with the DRP, vis-à-vis the order dated 05.05.2022.

11.1. We have queried Messrs Agarwal and Rai, as to how the DRP would revise its findings based on the rectification application.

11.2. Messrs Agarwal and Rai say that crucial facts were missed by the DRP while passing the order dated 05.05.2022 and therefore, a rectification application has been filed.

12. Furthermore, we have been asked to stand over the matter, to await the decision of the DRP qua the revenue's rectification application.

13. Mr Jolly, on the other hand, says that he is willing to go on with the matter based on the demurrer that the result of the rectification application would be adverse to the interests of the petitioner.

14. Messrs Agarwal and Rai, however, insist that the matter should be stood over.

15. To enable the revenue to bring the order passed in its rectification application on the record, the matter is stood over.

15.1. Needless to add, the DRP will take an independent decision in the matter de hors the observations made above vis-à-vis the revenue's rectification application.

16. We may also note that despite an opportunity being given to the revenue to file counter-affidavit (s) in the above-captioned matters, it has failed to comply.

16.1 In W.P.(C) 9593/2022, the order to this effect was passed on 24.06.2022. Likewise, in W.P.(C) 10055/2022 via order dated 05.07.2022, time was granted to the revenue to file a counter-affidavit.

17. Since a request is made on behalf of the counsels for the revenue to grant further time to file counter-affidavits in the above-captioned matters, the same is acceded to.

17.1. The counter-affidavits will be filed by the revenue within the next four weeks.

17.2. Rejoinder thereto, if any, be filed before the next date of hearing.

18. However, in the interregnum, we are inclined to direct as follows: the petitioner will receive income from the concerned remitters after imposition of withholding tax at the rate of 1.5%; with the caveat, that if the petitioner were to fail in the aforementioned writ actions, the balance amount calculated at the differential rate of 2.5% will be deposited with the revenue post-haste.

………………”

9. Pursuant to the aforesaid interim direction, the petitioner has received remittances with a withholding tax at the rate of 1.5%. By the time these writ petitions were taken up for hearing, it was evident that they had essentially been rendered infructous consequent to the FYs' themselves having come to an end. However, Mr. Jolly drew our attention to paragraph 18 of the order passed on 28 July 2022 and which had provided that in case the petition were to fail, the balance amount calculated at a differential rate of 2.5% would be deposited. It was on the aforesaid basis that the writ petitioners prayed for the matters being heard and disposed of finally on merits and notwithstanding the FY having come to an end.

10. In our considered opinion, para 18 of our interim order clearly requires a finding on merits being rendered irrespective of the FY having come to an end since the liability of the petitioner for the period in question would have to be adjudged lest it be put to prejudice and be compelled to pay the differential tax @ 2.5%.

11. One of the primary grounds of challenge which was noticed by the Court while entertaining the writ petition was of the respondents having accepted the profit attribution rate to be 26%. It was in the aforesaid backdrop that the petitioners appear to have contended that the withholding rate of tax would not exceed 1.04%. However, and since they had been adhering to a withholding tax rate of 1.5%, and which was the rate that was admittedly followed for the period spanning FYs‟ 2018-19 to 2020-21, the Court had in the interim stipulated that the withholding tax rate would be 1.5%.

12. From a reading of the impugned order, we note that the profit attribution rate of 26% does not appear to be disputed. This is evident from a reading of the following passages as appearing in the impugned order:-

XXXX XXXX XXXX

> 13. Notwithstanding the authority having noticed the profit attribution rate, it proceeded to frame a withholding tax rate of 4%. Since the factum of the withholding tax rate not exceeding 1.04%, when computed alongside the profit attribution rate of 26%, was not seriously questioned, we find ourselves unable to sustain the order impugned."

3. In the absence of any facts that may have been relied upon by the respondents and which may have warranted a review of the conclusions which stand recorded in our final judgment rendered on 03 April 2024, we find ourselves unable to sustain the orders impugned.

4. We accordingly allow the present writ petitions and quash the impugned orders dated 19 June 2024 and 29 May 2024. The writ petitioner consequently is entitled to receive the payments subject to a withholding tax at the rate of 1.5%.

5. The present order shall be without prejudice to rights of the respondents on merits and which shall be open for examination in the course of regular assessment.

6. The first respondent to consequently take appropriate steps to rectify the particulars which appear on the Income Tax Portal.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 14, 2024/sp