$~59

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

\+ W.P.(C) 16673/2023 & CM APPL. 67202/2023 (Direction)

DISH TV INDIA LTD. THROUGH ITS AUTHORIZED REPRESENTATIVE ..... Petitioner

Through: Mr. Vivek Sarin, Ms. Divyanshi Singh & Mr. Satish C. Kaushik, Advs.

Versus

DIRECTORATE GENERAL OF INCOME TAX INTERNATIONAL TAXATION AND ORS. ..... Respondents

Through: Mr. Vipul Agrawal, SSC for R-1.
Mr. Apoorv Kurup, CGSC with Ms. Nidhi Mittal, Mr. Akhil Hasija, Ms. Gauri Goburdhun, Mr. Gurjas Narula & Ms. Aanchal, Advs. for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **06.03.2024**

1. The writ petitioner has approached this Court seeking the following reliefs:-

> "a. Issue writ, order or direction in the nature of certiorari or any other appropriate writ or direction setting aside the Order dated 17.10.2023 passed by Respondent No. 2 being in violation of Article 14, 19(1)(g), 265, 300A of the Constitution of India and Section 90 & 195 of ITA, 1961, Article 7 of India-Singapore DTAA and the judgment in the case of Director of Income Tax v. New Skies Satellite BV, 2016 SCC OnLine Del 796 and Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax, (2022) 3 SCC 321;
>
> b. Issue writ, order or direction in the nature of certiorari or any other appropriate writ or direction setting aside the Order dated 17.10.2023 passed by Respondent No. 3 being in violation of

Article 14, 19(1)(g), 265, 300A of the Constitution of India and Section 90 & 195 of ITA, 1961, Article 7 of India-Singapore DTAA and the judgment in the case of Director of Income Tax v.New Skies Satellite BV, 2016 SCC OnLine Del 796 and Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax, (2022) 3 SCC 321;

c. Issue writ, order or direction in the nature of mandamus directing Respondent No. 2 and 3 to comply with the judgment of this Hon'ble Court in the case of Director of Income Tax v. New Skies Satellite BV, 2016 SCC OnLine Del 796 and Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax, (2022) 3 SCC 321;

d. Hold and declare that there is no legal requirement of withholding tax obligation (TDS) under the provisions of Section 195 of Income Tax Act, 1961 r/w the provisions of India Singapore Double Taxation Avoidance vide Notification No. GSR 610(E) dated 08.08.1994 as amended from time to time while making payment towards satellite transmission service charges;

e. Issue writ, order or direction in the nature of prohibition forbearing Respondent No. 2 and 3 from deducting tax at source under Section 195 of Income Tax Act, 1961 while remitting payment to Respondent No. 4 towards satellite transmission service charges under the provisions of Article 6(e) agreement dated 01.08.2021 and that of Article 6(e) of the agreement dated 04.12.2021 and charging it back from Petitioner to off set the cost of tax as being violative of provisions of ITA, 1961 read with the provisions of India Singapore DTAA;

f. Issue writ, order or direction in the nature of mandamus directing Respondent No. 1 and 5 to ensure compliance by Respondent No. 3 with the judgment of this Hon'ble Court in the case of Director of Income Tax v. New Skies Satellite BV, 2016 SCC OnLine Del 796 and Engineering Analysis Centre of Excellence Pvt. Ltd. v. Commissioner of Income Tax, (2022) 3 SCC 321, by taking appropriate steps or advisory to this effect;

g. Pass such other and further orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case."

2. The principal grievance of the writ petitioner appears to be against the third respondent who according to it is grossing up the consideration payable to it in order to recover tax liable to be deducted

at source [“**TDS**”] from the petitioner. The TDS is being deducted by respondent no.3 in respect of payments being made to the fourth respondent against satellite transponder leasing as well as data / satellite transmission service charges.

3. According to the petitioner, it is being compelled to bear the burden of excessive TDS being deducted and the burden thereof being transferred to be borne by the petitioner.

4. In our considered opinion, the petitioner is not the deductor of TDS. The dispute which is sought to be addressed essentially stems from the working that it has with respondent no.3 in terms of an agreement dated 01 August 2021 and 04 December 2021. Viewed in that light, it is manifest that the dispute is essentially contractual and clearly does not warrant any interference by the Court under Article 226 of the Constitution.

5. The appropriate rate of tax which the third respondent is liable to deduct is an issue which must necessarily be raised by it in accordance with law. If the grievance of the petitioner be that it is being excessively charged by that respondent, the same would clearly be a contractual dispute and which would not warrant the same being examined in a writ petition.

6. The writ petition is clearly misconceived and is accordingly dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 06, 2024/neha