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

+ W.P.(C) 975/2026, CM APPL. 4721/2026, CM APPL. 4722/2026 &
CM APPL. 4723/2026

EMERALD PUBLISHING LIMITED

.....Petitioner

Through: Ms. Sonu Bhatnagar, Sr. Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX.....Respondent

Through: Mr. Debesh Panda, SSC and Adv.
Anaunta Shankar, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

% **03.02.2026**

1. The instant writ petition impugns the order dated 08.11.2025 passed by the office of Circle Int Tax 1(2)(2) (*hereinafter referred to as competent authority*) and certificate dated 08.11.2025 issued under Section 197 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) whereby a tax withholding certificate at the rate of 15% has been issued to the petitioner against its request of certificate of nil deduction.
2. As per the facts pleaded, the petitioner Emerald Publishing Limited ('the Assessee' or 'Company') an entity incorporated under the laws of United Kingdom ('UK') is a tax resident of the UK. The Company is engaged in publication of academic journals and books (in the area of business and management including social sciences, engineering, linguistics



and audiology), digital case studies and licensing the use of its journals to third parties from outside India to customers in India and various other countries.

3. During the year under consideration, the Company has entered into agreements with Indian customers for providing access to online database and expecting to derive revenue from Indian customers, which is not chargeable to tax in India as Royalty or Fees for technical services ("FTS"), as it merely provides access to standardized database which is in the nature of subscription made to a journal and no part of copyright is transferred.

4. The petitioner has also asserted that the Company does not have any permanent establishment ("PE") or fixed place of business in India and the Company is not providing any services in India through its employee or personnel. As per the submission of the petitioner, the revenue from providing access to online database in the form of subscription is not taxable as FTS both under the Act and under the provisions of Article 13 of the India UK tax treaty since the make available clause is not satisfied, absence of human intervention, no transfer of right to apply technology and in any case does not amount to technical knowledge, know-how, experience, skills or process being made available.

5. As per the petitioner, the key features of the agreement are as follows:

- It grants the non-exclusive, non-transferable subscription right to the customer during the term of the agreement to access various licensed products.
- The company does not permit the subscribers or any other party to:
- Use any part of the licensed materials for any commercial or business purpose;



- Make print or electronic copies of multiple extracts or make multiple copies of any part of the licensed materials for any purpose;
- Download or distribute any part of the licensed materials;
- Prepare, publish or distribute the information contain in the database;
or
- Alter, abridge, adapt or modify the information containing in the database for any purpose.
- All rights, titles and interest in the licensed material remain with the petitioner.
- Petitioner is not obligated to provide access to the updated or revised contents of the licensed products to the customers following the end of subscription period.

6. Ms. Sonu Bhatnagar, learned senior counsel for the petitioner submitted that while moving the application under Section 197 and claiming a withholding tax certificate of 0% for the Financial Year 2025-26, the petitioner had clearly indicated that the transaction carried out by it are not taxable in India and that it does not have any PE in India.

7. While relying upon judgments of this Court rendered in case of **Ovid Technologies Inc v DCIT [2025] 176 Taxmann.com 557** and other judgments in her support, she argued that these judgments were referred to in the reply but none of the judgments have been dealt with by the competent authority and the order has been passed to issue withholding certificate at the rate of 15%.

8. She argued that the reasons mentioned in order including those given in para no. 8 to 10 of the order impugned are wholly unsustainable. Dealing



with one ground after another, she argued that so far as outstanding demand of Rs. 8,94,660/- is concerned, the same relates to equalization levy, which the petitioner had been paying during past many years and negligible due or even the fact that Equalisation Duty has been paid cannot be a decisive factor to hold that the petitioner's sales or services are liable to be taxed under the Act of 1961.

9. Learned counsel for the petitioner relied upon another recent decision of this Court in the case of **Branch Metrics Inc v. DCIT Circle (International Taxation) 112, New Delhi 2026:DHC:897-DB** and submitted that the facts of the present case are identical to the said case **Branch Metrics (supra)** and the petitioner's writ petition also deserves to be allowed.

10. Mr. Debesh Panda, learned Senior Standing Counsel for the Department submitted that in case the petitioner, a certificate of 2% be ordered to be issued, as has been done in the case of **Branch Metrics (supra)**. He however could not support the order opposed.

11. In rejoinder, learned Senior Counsel for the petitioner submitted that the present case stands on a much better footing than **Branch Metrics (supra)** inasmuch as the petitioner has filed its return of income for AYs 2019-20 to 2024-25 and in each of these years, the petitioner has got refund even of the equalization levy, which it had paid.

12. Mr. Panda, learned Senior Standing Counsel was not in a position to dispute the aforesaid fact that for last 5-6 years, the petitioner's return have been processed and entire amount of tax has been refunded.

13. Heard learned counsel for the parties and perused the record.

14. On perusal of the impugned order, we find that the reasons given by



the competent authority are untenable on their face. First reason given in para no.8 of the impugned order, that the petitioner has not filed application under Section 197 of the Act of 1961 for previous years is untenable rather irrelevant, the same cannot be a reason to deny the certificate.

15. If the petitioner has not requested to issue Tax withholding certificate in previous years, it is not precluded from claiming it in subsequent years. May be an entity deems it appropriate to pay equalization levy and then claim refund or due to lack of volume of business it does not wish to get a certificate. But the same does not take away the right of the entity to claim withholding certificate at nil rate, if it is able to demonstrate that the services rendered by it are not liable to tax under the Act of 1961.

16. So far as the second issue that the transactions carried out by the petitioner fall in ambit of 'Royalty' is concerned, the petitioner has a strong *prima-facie* case supported by the judgment of Hon'ble the Supreme Court in the case of **Ovid Technologies Inc v DCIT [2025] 176 Taxmann.com 557**. Unfortunately, neither this judgment nor such contention of the Petitioner has been dealt with by the competent authority in the order impugned.

17. We are constrained to observe that if an assessee-applicant relies upon a judgment which directly favours its stand, it is incumbent upon the competent authority to deal with the same and distinguish the same, if he can.

18. The competent authority has shirked from its statutory duty and kept the principles of adjudicatory mechanism in abeyance. The order oppugned therefore, deserves to be quashed on such solitary count.

19. The competent authority has made a reference of outstanding demand



of Rs. 8,94,666/- as per the TRACES Portal, which as per the explanation furnished by learned Senior Counsel, is due towards equalization levy.

20. Surprisingly, in para 7 of the order under challenge, the competent authority has held that “As per section 90(2) of the Act, where the Central Government has entered into an agreement with the Government of any country outside India for granting relief of tax or for avoidance of double taxation, the tax position of non-resident taxpayer could be determined based on the provisions of the Act or the relevant tax treaty, whichever is more beneficial”. This observation has been made in order to hold that the revenue received by the petitioner be treated as royalty, being more beneficial without even noticing beneficial to whom? Revenue or the assessee. The competent authority seems to have intentionally misread rather distorted this provision, which in no ambiguous terms provides that the provision of the Act of 1961 shall apply to the extent they are more beneficial to the assessee.

21. We are pained to observe that such intentional violence with the provisions of the Act and applicable law has become a new normal. Now the time has come to deal with such authorities with heavy hands, who compel the tax payers to approach the courts even for enforcement of their statutory rights which are otherwise settled and well defined.

22. All the reasons mentioned in the order impugned are unsustainable on the face of it, for which, we hereby quash the order dated 08.11.2025 passed by the competent authority so also the consequential certificate. The petitioner’s application under Section 197 of the Act of 1961 is allowed, as prayed.

23. The writ petition is allowed with a cost of Rs. 25,000/- to be



recovered from the author of the order.

24. The competent authority is directed to issue a tax withholding certificate at 'nil rate', within a period of 15 days from today.

25. A copy of this order be sent to the principal Chief Commissioner Income Tax for ensuring compliance of this order.

DINESH MEHTA, J.

VINOD KUMAR, J.

FEBRUARY 3, 2026/cd