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

% *Date of decision: 17th February, 2026*

\+ W.P.(C) 2266/2026, CM APPL. 10946/2026

ERNST AND YOUNG LLP .....Petitioner

Through: Mr. Kamal Sawhney, Mr. Arun Bhadauria, Mr. Nishank Vashistha, Advs.

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE INTERNATIONAL TAX-1-2-2, NEW DELHI .....Respondent

Through: Mr. Indruj Rai, SSC, Mr. Sanjeev Menon, Mr. Rahul Singh, JSCs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

DINESH MEHTA, J. (ORAL)

1. By way of present writ petition preferred under Article 226 of the Constitution of India, the petitioner has challenged the order dated 16.01.2026 so also the certificate issued on 28.01.2026 under Section 195 of the Income Tax Act, 1961 *(hereinafter referred to as the 'Act of 1961')*.

2. Mr. Kamal Sawhney, learned counsel for the petitioner argued that the respondent has proceeded completely contrary to rather in derogation of the order which this Court had passed in petitioner's own case being W.P.(C)

16158/2025 for the very same assessment year on 14.01.2026. He argued that simply because instead of issuing a direction to issue 'Nil' rate certificate, the Court deemed it apt to remand the matter (while recording a finding of no taxability) only with a view to ensure that if there is anything remaining or left, the competent authority may see and pass a fresh order, the respondent could not take the same view, which he had taken earlier. He argued that without pointing out any new fact, the Competent Authority has given a go-by to the finding which this Court has recorded and proceeded to issue a certificate at 5.25% rate which is not only arbitrary but also a contempt to say the least.

3. Mr. Indruj Rai, learned senior standing counsel for the respondent, on the other hand, submitted that the action of the competent authority may be contrary to law but not *malafide,* as he has *bonafidely* issued a certificate at the rate of 5.25% considering that the department was in the process of filing an SLP before Hon'ble the Supreme Court against the order of this Court in case of ***Commissioner of Income Tax, International Taxation-1, New Delhi v. Clifford Chance Pte. Ltd***, (2025:DHC:10838-DB) wherein the issue of virtual Permanent Establishment (*hereinafter referred to as 'PE'*) was decided against the revenue. He further submitted that the department's consistent stand has been that there can be a virtual PE and physical presence is not necessary in India and, therefore, under misconception he seems to have passed the order under challenge.

4. Heard learned counsel for the parties. In light of the submission of Mr. Indruj Rai that Competent Authority might have issued the certificate of 5.25% tax *bonafidely,* we do not propose to come heavily against the respondent, however, we warn him to be careful in future. Instead of

setting-aside and remanding the matter to the competent authority to issue a certificate at 'Nil' rate, we hereby order that the certificate dated 28.01.2026 which the respondent has issued to the petitioner shall be treated to be a certificate of 'Nil' rate instead of certificate of 5.25%.

5. On furnishing a copy of this order, the competent authority shall forthwith issue amended/rectified certificate of 'Nil' rate within a period of seven days of producing a web-copy of this order.

6. Considering the facts and circumstances of the case and the order which has been passed by this Court in petitioner's own case on 14.01.2026, we issue the following additional directions:

(i) The competent officer or any other authority who is supposed to consider the petitioner's application under Section 195 of the Act of 1961, shall issue a certificate of 'Nil' rate of tax not only for the Financial Year 2025-26 (AY 2026-27), but also for the subsequent years in case an application is filed. The certificate(s) shall be issued within 30 days of the day when application is filed.

(ii) The competent authority dealing with petitioner's subsequent application(s) under Section 195 of the Act of 1961 shall not be bound by direction given in clause(i) above, if he comes to a conclusion and records a finding that the petitioner is having a PE in India and the transactions which the company has carried out in India are liable to be taxed in India. However, before recording such finding, a notice in this regard shall be issued to the petitioner.

(iii) It will also be required from the petitioner to disclose truly and fully, all facts in its applications to be filed each year. It shall be required of the petitioner to extend full cooperation when any such notice (as provided in clause (ii) above) is issued for the subsequent year(s).

7. With aforesaid directions, petition along with pending application stands disposed of.

DINESH MEHTA
(JUDGE)

VINOD KUMAR
(JUDGE)

FEBRUARY 17, 2026/ck