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

+ W.P. (C) 8524/2020 & CM APPL.27471 /2020

CAMIONS LOGISTICS SOLUTIONS  
PRIVATE LIMITED

..... Petitioner

Through: Mr. V.N. Jha, Advocate.

versus

JOINT COMMISSIONER OF INCOME TAX, OSD, TDS  
CIRCLE-73-1, NEW DELHI & ANR. .... Respondents

Through: Ms. Adeeba Mujahid,  
Advocate for Ms. Lakshmi  
Gurung, Sr. Standing  
Counsel.

% Date of Decision: 23<sup>rd</sup> December, 2020

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**J U D G M E N T**

**MANMOHAN, J (Oral):**

1. Present writ petition has been filed challenging the Certificate dated 30<sup>th</sup> June, 2020 issued by respondent No.1 under Section 197(1) of the Income Tax Act refusing to grant a certificate of deduction of tax at source at NIL rate, on payments to the petitioner company by its customers. Petitioner also prays for a direction to the respondent No.1 to reconsider the petitioner's application and grant Certificate under Section 197 of the Income Tax Act, 1961 for deduction of tax at source at NIL rate.

2. In the writ petition it has been averred that the respondent did not compute the tax liability of the petitioner which is a mandatory requirement of Rule 28AA and has arbitrarily concluded on mere guess work that there would be increase in tax liability as the petitioner's turnover is projected to increase.

3. The learned standing counsel for respondent submits that present writ petition is not maintainable as the petitioner has not exhausted the alternative efficacious remedy available under Section 264 of the Act. She relies upon the judgment of this court in the case of *Sis Live Vs. Income Tax Officer, (2011) 333 ITR 13 (Del.)*, wherein the court declined to entertain a similar writ petition and directed the petitioner to file a revision petition.

4. She further submits that the scope of judicial review of an order passed under Section 197 of the Act is limited as it is directed not against the rates prescribed in the certificate, but against the decision making process. She submits that it is settled law that till there is a patent illegality and/or error apparent on the face of the decision or non-application of mind by the Officer, this Court would not interfere with the decision arrived at by such officer. In support of her submission, she relies upon the judgment dated 20<sup>th</sup> December, 2019 passed by this Court in *National Petroleum Construction Company Vs. Deputy Commissioner of Income Tax, Circle-2(2)(2)*.

5. She submits that the tax liability depends on the estimated profits, which in turn, depends on the turnover. She states that in financial year 2020-21, the petitioner has itself projected a rise of more than 60% in the turnover.

6. This court, in similar facts, in the case of *Manpowergroup Services India Pvt. Ltd Vs. Commissioner Of Income Tax (Tds)-1, New Delhi & Anr., being WP(C) 5865/2020*, decided on 21<sup>st</sup> December, 2020, has held that since the impugned order was passed after an approval from the CIT, it cannot be challenged by way of a revision petition before the CIT under Section 264 of the Act. To hold otherwise, would amount to directing the petitioner to file an ‘*appeal from Caesar to Caesar*’.

7. This court also held in *Manpowergroup Services India Pvt. Ltd Vs. Commissioner Of Income Tax (Tds)-1 (supra)* that the assessing officer cannot ignore the mandate of Rule 28AA and proceed on any other basis as the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated. The relevant portion of Rule 28AA of the Income Tax Rules reads as under:-

*“28AA. (1) Where the Assessing Officer, on an application made by a person under sub-rule (1) of rule 28 is satisfied that existing and estimated tax liability of a person justifies the deduction of tax at lower rate or no deduction of tax, as the case may be, the Assessing Officer shall issue a certificate in accordance with the provisions of sub-section (1) of section 197 for deduction of tax at such lower rate or no deduction of tax.*

*(2) The existing and estimated liability referred to in sub-rule (1) shall be determined by the Assessing Officer after taking into consideration the following:—*

*(i) tax payable on estimated income of the previous year relevant to the assessment year;*

(ii) tax payable on the assessed or returned [or estimated income, as the case may be, of last four] previous years;

(iii) existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957;

(iv) advance tax payment [tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under subrule (1) of rule 28];”

(emphasis supplied)

8. Perusal of the aforesaid Rule shows that the considerations and parameters prescribed under clause (2) are mandatory and the department is bound to take the same into consideration for the purpose of computation of existing and estimated liability referred in sub-rule (1). We have perused the impugned reasons furnished by the Revenue in support of the impugned Lower Tax Deduction Certificate and note that as opposed to estimation of tax liability, the assessing officer has instead rejected the estimates provided by the assessee, on a broad and generalized reasoning. Thus, in absence of determination, as provided under the above-noted Rule, the reasons for rejections cannot be termed as valid in eyes of law. Consequently, decision making process in the present case is contrary to law.

9. In view of the aforesaid discussion, this court finds that there is non-application of mind which vitiates the impugned order and reasons. Accordingly, we set aside the impugned order and reasons and remand the matter to the Assessing Officer for fresh determination in accordance with law as expeditiously as possible preferably within three weeks.

10. In the interim, we direct that the benefit of revised TDS rates prescribed for financial year 2019-2020 (determined vide order dated 26th July, 2019) read with rebate of 25% given by Ministry of Finance on account of Covid-19 crisis from the rates applicable in the preceding year 2019-20 vide Press Release dated 13th May, 2020 be given to the petitioner. Respondents should ensure compliance of this order forthwith. With the aforesaid directions, the writ petition is allowed and pending application(s) stand disposed of.

**MANMOHAN, J**

**SANJEEV NARULA, J**

**DECEMBER 23, 2020**  
**AS**

सत्यमेव जयते