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

% Date of Decision: 19.03.2021

+ **W.P.(C) 3470/2021**

BT (INDIA) PRIVATE LIMITEDPetitioner

versus

INCOME TAX OFFICER & ANR.Respondents

+ **W.P.(C) 3482/2021**

BT (INDIA) PRIVATE LIMITED Petitioner

versus

INCOME TAX OFFICER & ANR. Respondents

+ **W.P.(C) 3492/2021**

BT (INDIA) PRIVATE LIMITED Petitioner

versus

INCOME TAX OFFICER & ANR. Respondents

+ **W.P.(C) 3489/2021**

BT (INDIA) PRIVATE LIMITED Petitioner

versus

INCOME TAX OFFICER & ANR. Respondents

+ **W.P.(C) 3490/2021**

BT (INDIA) PRIVATE LIMITED Petitioner

versus

INCOME TAX OFFICER & ANR. Respondents

+ **W.P.(C) 3501/2021**

BT (INDIA) PRIVATE LIMITED Petitioner

versus

INCOME TAX OFFICER & ANR.

..... Respondents

Present: Mr. Ajay Vohra, Sr. Advocate with
Mr. Gaurav Jain, Advocate for the
petitioner.
Mr. Sunil Aggarwal, Sr. Standing
Counsel for Respondents/Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

CM APPL. 10535/2021 in WP(C) 3482/2021

CM APPL. 10554/2021 in WP(C) 3492/2021

CM APPL. 10546/2021 in WP(C) 3489/2021

CM APPL. 10548/2021 in WP(C) 3490/2021

CM APPL. 10598/2021 in WP(C) 3501/2021

1. Allowed, subject to just exceptions.

WP(C) 3470/2021 and CM APPL. 10517/2021

WP(C) 3482/2021 and CM APPL. 10534/2021

WP(C) 3492/2021 and CM APPL. 10553/2021

WP(C) 3489/2021 and CM APPL. 10545/2021

WP(C) 3490/2021 and CM APPL. 10547/2021

WP(C) 3501/2021 and CM APPL. 10597/2021

2. Issue notice.

3. Mr. Sunil Aggarwal accepts service on behalf of the respondents/Revenue.

4. With the consent of counsel for the parties, the writ petitions are taken up for hearing and final disposal.

5. The short question which arises for consideration is: whether the proceedings under Sections 201(1) and 201(1a) of the Income Tax Act, 1961

[in short "the Act"] could have been initiated without the concerned officer determining the jurisdictional issue as to whether the remittances made were chargeable to tax.

6. Mr. Ajay Vohra, learned Senior Counsel, who appears on behalf of the petitioners, i.e., the deductors, says that this was the issue which the concerned officer ought to have decided at the very threshold.

6.1 In support of his submission, Mr. Vohra has relied upon the following decisions rendered by the Supreme Court:

(i) ***GE India Technology Cen. (P.) Ltd. v. Commissioner of Income Tax 327 ITR 456 (SC)***

(ii) ***Judgment dated 02.03.2021, passed in Civil Appeal No.8733-8734/2018, titled Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT.***

6.2. To be noted, these judgements are *inter alia* pivoted on the language of Section 195(1) of the Act.

6.3. On the other hand, Mr. Aggarwal, who appears on behalf of the revenue submits that there are several recipients *vis-a-vis* whom deductions had to be made by the petitioners apart from BT Plc. It is also Mr. Aggarwal's submission that in two assessment years [i.e., 2012-2013 and 2013-2014], the petitioners have taken recourse to the remedies available under the Act.

6.4. Mr. Aggarwal goes on to submit that only a show-cause notice has been issued and therefore, this Court ought not to interfere at this stage in exercise of powers under Article 226 of the Constitution.

7. Having heard the learned counsel for the parties, according to us, if the statutory authority exercises its powers without determining whether or

not it has jurisdiction in the matter, that itself, may, in certain cases, call for interference.

7.1 In this particular matter, as pointed out by Mr. Vohra (something which has not been refuted by Mr. Aggarwal), 85 to 90% of the remittances have been made to the BT Plc, a non-resident company, which approached the Authority for Advance Rulings [in short “AAR”] as far back in 2015.

7.2 The record shows that the application of AAR was admitted as far back on 07.08.2015. Therefore, a large part of problem, to say, has its genesis in the AAR not acting with due alacrity. However, having regard to the submissions made before us by learned counsel for the parties, we are of the view that, for the moment, the captioned writ petitions can be disposed of with the following directions:

- (i) The concerned authority will adjudicate the impugned show cause notices *qua* which we are told that the petitioners have filed their replies.
- (ii) While carrying out the adjudication, the concerned authority will in the first instance determine as to whether or not the jurisdictional facts obtain in the matter i.e. whether the remittances in issue are chargeable to tax.
- (iii) The concerned authority will, therefore, in the first instance pass an order on this aspect of the matter.
- (iv) The concerned authority in this behalf will give personal hearing to the authorized representative of the petitioner, which will include the advocate engaged by the petitioner.
- (v) A speaking order will be passed and a copy of the same will be furnished to the petitioner.
- (vi) The petitioner will have liberty to assail the same as per law by taking

recourse to an appropriate remedy.

(vii) In case, the order passed is adverse to the interests of the petitioner, the same will not be given effect to for four weeks, commencing from the date the said order is served on the petitioner.

(viii) In case, the concerned authority feels it is necessary to await the decision of the AAR in the matter concerning BT Plc, it will be free to take this aspect into account as well.

8. In view of the foregoing, the pending applications shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

MARCH 19, 2021

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