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

+ W.P.(C) 11618/2021

PERFETTI VAN MELLE HOLDING B V

..... Petitioner

Through Mr.Deepak Chopra, Advocate.

versus

COMMISSIONER OF INCOME TAX II

..... Respondent

Through Mr.Kunal Sharma, Advocate.

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Date of Decision: 11th October, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The petition has been heard by way of video conferencing.
2. Present writ petition has been filed seeking directions to the Respondent to dispose of the application dated 18th August, 2021 filed by the Petitioner under Section 264 of the Income Tax Act, 1961 (“the Act”) in a time bound manner and in accordance with law.
3. Learned counsel for the petitioner states that the petitioner is a company incorporated under the laws of Netherlands and is engaged in the manufacture and sale of sugar confectionary/gum and provision of operational and other support services for the benefit of companies of Perfetti Van Melle Group (Perfetti Group) situated in various countries. He states that the Petitioner holds 99.999% of the shares of Perfetti Van Melle India Private Limited (“Perfetti India”) in the form of equity shares since inception. He

further states that during the current Financial Year (“FY”) i.e. 2021-22, Perfetti India proposes to distribute a dividend of INR 30,00,00,000 (estimated) to its equity shareholders out of which dividend of INR 29,99,98,913 is estimated to be received by the Petitioner by 31st October 2021.

4. Learned counsel for the petitioner states that the Petitioner filed an application dated 12th June, 2021 under Section 197 of the Act before the Assessing Officer (AO) requesting him to issue a certificate authorizing the Petitioner to receive dividend income from Perfetti India subject to lower withholding tax rate of 5% as applicable under the Double Taxation Avoidance Agreement (“DTAA”) between India and Netherlands read with the Protocol. He submits that the Protocol to India Netherlands DTAA provides for “Most Favoured Nation” (“MFN”) clause in terms of which when India enters into a DTAA with another member country of the Organisation for Economic Cooperation and Development (“OECD”) wherein India limits its tax deduction at source (“TDS”) to a lower rate than the one agreed between India and Netherlands, then from the date such agreement comes into force, the rates or scope contemplated in such other treaty shall apply to India-Netherlands DTAA. He states that though the India-Netherlands DTAA prescribes a withholding rate of 10%, yet as India has entered into DTAA with other OECD member countries being Slovenia/ Lithuania/ Colombia wherein tax rate on dividend income was agreed at a lower rate of 5%, owing to the MFN clause, the lower withholding rate shall also be applicable to any dividend income covered under the India-Netherlands DTAA. He further states that the Petitioner filed a detailed reply to all the queries raised by the AO however, the Petitioner’s application to

withhold tax at a lower rate was rejected vide order dated 27th July, 2021 and a certificate under Section 197 of the Act at the rate of 10% was issued to the Petitioner.

5. Learned counsel for the petitioner states that in the order rejecting the Petitioner's application, the AO observed that the benefit of the MFN clause could not be availed by the Petitioner as Slovenia / Lithuania / Colombia were not OECD countries at the time when the India – Netherlands Treaty came into effect. He states that aggrieved by the withholding certificate issued by the AO, the Petitioner filed an application dated 18th August, 2021 before the Respondent under Section 264 of the Act. He states that, however, the same has not been decided till now despite repeated reminders. He further submits that the principle issue involved in the present case i.e. withholding tax at a lower rate of 5% in respect of dividend income has already been decided in the Petitioner's favour by this court in *Concentrix Services Netherlands B.V. v. ITO (TDS), W.P.(C) 9051/2020 [2021] 127 taxmann.com 43 (Delhi)* and *Nestle SA v. Assessing Officer, Circle (International Taxation), W.P.(C) 3243-2021*.

6. Issue notice. Mr.Kunal Sharma, Advocate accepts notice on behalf of the Respondent. He states that he has no objection if the Respondent is directed to dispose of the application filed by the Petitioner under Section 264 of the Act in a time bound manner.

7. Keeping in view the limited prayer made, this Court disposes of the present writ petition directing the Respondent to decide the Petitioner's application dated 18th August, 2021 filed under Section 264 of the Act, by way of a reasoned, order in accordance with law, within eight weeks.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

OCTOBER 11, 2021
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