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

+ W.P.(C) 10908/2022 & C.M.No.31782/2022

JONES LNG LASALLE PROPERTY CONSULTANTS (INDIA)
PRIVATE LIMITED Petitioner

Through: Mr.Deepak Chopra with Harpreet
Singh Ajmani and Mr.Ankul Goayl,
Advocates.

versus

THE DEPUTY COMMISSIONER OF INCOME TAX, TDS
CIRCLE 75(1) AND ANR Respondents

Through: Mr.Ajit Sharma, Sr.Standing Counsel
for the Revenue.

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Date of Decision: 21st July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 16th May, 2022 passed by Respondent No. 1 rejecting the application filed by the Petitioner under Section 197 of the Income Tax Act, 1961 [‘the Act’] for Assessment Year 2022-23. Petitioner also seeks directions to the Respondents to grant a withholding certificate at a lower rate for the Financial Year 2022-23 and to decide the refund applications filed by the

Petitioner for the Assessment Years 2008-09 to 2014-15 and 2016-17 to 2018-19 in a time bound manner.

2. Learned counsel for the Petitioner states that the Petitioner company is engaged in the business of real estate consultancy and advisory services, brokerage, project management, design and construction of office interiors, integrated facility management and shared service office services. He states that the Petitioner was issued a notice dated 10th February, 2022 under Section 226 of the Act seeking to recover outstanding demand for the Assessment Years 2009-10, 2010-11, 2011-12, 2012-13, 2014-15, 2015-16, 2017-18 & 2018-19 aggregating to Rs. 3,55,89,80,829/-. He further states that the Petitioner replied to the notice explaining to the authorities that the demands raised were incorrect and that the Petitioner has filed various letters since 2019 seeking deletion of such erroneous outstanding tax demand and release of consequential refund.

3. Learned counsel for the Petitioner states that the Petitioner filed an application under Section 197 of the Act seeking a withholding certificate at a lower tax rate of 1.74%. He however, states that the said application was rejected vide the impugned order on the ground that demand of Rs.322,33,71,079/- was outstanding on the Petitioner's PAN. He points out that the Respondents in the impugned order itself has observed that the pending demands are likely to be reduced to NIL if the Petitioner's rectification applications are processed. He states that incorrect outstanding demand have been consistently appearing on the Department's portal even after numerous representation and applications filed by the Petitioner. He further states that as the rectification applications filed by the Petitioner remain undecided, the Petitioner has been denied a refund of INR

92,36,00,000/- (excluding interest) which has resulted in an unforeseen situation where the Petitioner is forced to bear the brunt of Department's laxity and casual attitude.

4. Learned counsel for the Petitioner states that since 2019, the Petitioner has addressed multiple reminders and representations to the authorities seeking disposal of the rectification applications filed by the Petitioner. He, however, states that the same are still pending. He states that the Department is trying to take benefit of its own laches and if correct effect is given to the pending application, huge refunds shall be due and payable to the Petitioner.

5. Having heard the learned counsel for the parties and having perused the paper book, this Court finds that the Petitioner's application seeking withholding certificate at a low tax rate has been rejected by Respondent No.1 on the ground that there exists huge outstanding demand on their internal portal. However, in the very first paragraph of the impugned order, the Officer takes note of the observation of the PAN Assessing Officer that a number of rectification applications of the assessee are pending and once they are decided, the demand against the assessee is likely to be reduced to NIL. Consequently, this Court finds that the very foundation for rejection of the application filed by the Petitioner under Section 197 is self-contradictory. The impugned order rejecting the Petitioner's application reads as under:

“On perusal of the submission, it is noticed that the assessee has cumulative PAN demand of Rs 322,33,71,079/- for AY 2009-10, 2010-11, 2011-12, 2012-13, 2014-15, 2017-18 & 2018-19 as reflected in the TRACES Portal for which comments of PAN AO were invited and PAN AO had stated that rectification

applications of assessee are pending and demand is likely to be reduced to NIL.

Although, rectification orders are not yet passed. Assessee in its Form-13 has applied for LTDC for FY 2022-23 within section 194A, 194C & 194J. It is to be noted here that the average tax to turnover of the assessee for last four year is 2.14% which is exceeding the rate of TDS u/s 194C which is 2%. Thereby, application u/s 194C is likely to be rejected. However, for other sections for which assessee has applied for LTDC i.e. 194A and 194J, even if, the LTDC is approved at average tax to turnover ratio rate i.e. 2.14%, the tax foregone shall be Rs 143,25,84,969/-. It is be mentioned here that PAN demand of Rs 322,33,71,079/- is substantially higher than the tax foregone even if the LTDC is issued at the average tax to turnover ratio rate i.e 2.14%. After due consideration of these facts, the request for LTDC is rejected in order to protect the interest of the revenue.

Further, assessee is at the liberty to re-apply for LTDC for FY 2022-23 after the aforementioned rectification orders are passed and the same shall be considered on merits.”

6. Accordingly, this Court set asides the impugned order dated 16th May, 2022 and directs the Respondent No.2 to decide the rectification applications filed by the Petitioner, in accordance with law within six weeks. Needless to state that if any refund is due and payable to the Petitioner, the same shall be refunded not later than eight weeks from today, in accordance with law. This Court clarifies that it has not expressed any opinion on the merit of rectification application.
7. Further, the Respondent No.1 is directed to once again decide the Petitioner’s application under Section 197 of the Act qua Sections 194A and 194J of the Act, within two weeks of disposal of the rectification applications.

8. With the aforesaid directions, present writ petition along with pending application stands disposed of.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

JULY 21, 2022
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HIGH COURT OF DELHI



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