

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION(L)NO. 2764 OF 2018

TLG India Private Limited ..Petitioner

Vs.

Joint Commissioner of Income-Tax
(OSD)(TDS)-Range 2(3), Mumbai and Others ..Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. R. M. Poojary I/b Mint
and Confreres,, for the Petitioner.

Mr. Suresh Kumar, for the Respondents.

Mr. Abhishek Yadav(I. R. S.)DCIT-TDS 2(3) present.

CORAM:-S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATE :- OCTOBER 8, 2018.

P. C.:

By this Writ Petition under Article 226 of the
Constitution of India, the Petitioner is seeking the following
reliefs:-

“a) that this Hon'ble Court may be pleased to issue a Writ of
Certiorari, or a writ in the nature of Certiorari, or any other
appropriate writ, order or direction under Article 226 of the
Constitution of India, calling for the records of the Petitioner's case
so far as they relate to the issue of the impugned Certificates

(Exhibit-T and Exhibit-U); and after going through and examining the question of the validity, propriety and legality thereof, be pleased to quash the same.

b) that this Hon'ble Court may be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to issue certificates under section 197 of the Act within one week prescribing a NIL withholding tax rate on all payments covered by the 197 Application.

c) without prejudice to the forgoing and strictly in the alternative, this Hon'ble Court may be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to issue certificates under section 197 of the Act in line with the rate as recommended by the First Respondent on all the payments covered by the 197 Application (Refer Exhibit L).

d) that this Hon'ble Court may be pleased to issue a writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to refund the amounts deposited pursuant to Chapter XIX alongwith interest, within a period of 1(one) month.

e) That pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to direct the Respondents to issue a Nil withholding certificate to the Petitioner for all the payments in relation to the transactions covered in the 197 Application.

f) for ad-interim reliefs in terms of prayer clause (e) above.”

2 When this Writ Petition was extensively heard by us and the attention of the counsel appearing for the Respondents/Revenue was invited to paragraph 5 of the affidavit in reply to this Writ Petition, which affidavit has been filed by the

Deputy Commissioner of Income Tax (TDS), Range-2(3), Mumbai, on instructions, it is stated that the impugned communications / certificates, copies of which are annexed to the Writ Petition as Annexures-T and U are withdrawn. The concerned official will now issue fresh certificates in accordance with law.

3 While we allow withdrawal of these certificates and impugned in this Writ Petition with liberty to issue fresh certificates in accordance with law, we clarify that no functionary other than the officer referred to in the relevant statutory provision, namely Section 197 and the Rule 28AA of the Income Tax Rules, 1962 would be permitted to take over the jurisdiction or interfere in the exercise of the discretionary power envisaged by this statutory provision.

4 This order and clarification was necessitated after we called for the original records and perused them with the assistance of Mr. Suresh Kumar. After the infirmity and a serious legal one was pointed out to Mr. Suresh Kumar, he has obtained the instructions from the concerned official and thereafter stated that the impugned certificates stand withdrawn. It is only in that

light that the foregoing clarification has been issued.

5 We dispose off this Writ Petition by accepting the statements made by Mr. Suresh Kumar as undertaking to this Court. He makes a further statement that within a period of 10 days from today the certificates within the meaning of Section 197 read with Rule 28AA of the Income Tax Rule, 1962 would be issued by the concerned official and as required by the statute. It is that officer who will record his satisfaction while issuing the certificates. The Writ Petition is, therefore, disposed off by keeping open the larger issue and controversy. Should that arise again, it will be open for the Petitioner to rely on the very same grounds, as are set out in the present Petition. All contentions in that regard of the Petitioner are expressly kept open.

6 Additionally, we clarify that the certificates be issued as warranted and provided in law. While issuing those certificates, the Petitioner can request the officer to make it effective from a specific date. That liberty is given to the Petitioner, as well.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)