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

\+ W.P. (C) 5865/2020 & CM APPL. 21184/2020

MANPOWERGROUP SERVICES
INDIA PVT. LTD. ..... Petitioner
Through: Mr. Piyush Kaushik, Advocate

versus

COMMISSIONER OF INCOME TAX (TDS)-1,
NEW DELHI & ANR. ..... Respondents
Through: Ms.Lakshmi Gurung, Senior Standing Counsel with Ms Adeeba Mujahid, Jr. Standing Counsel.

Reserved on : 11th December, 2020
% Date of Decision: 21st December, 2020

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

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

**MANMOHAN, J:**

1. Present writ petition has been filed challenging the order dated 29th June, 2020 passed by respondent No.2 under Section 197 of the Income Tax Act, 1961 (hereinafter referred to as 'Act') refusing to grant a certificate of tax deduction at source at Nil rate to the petitioner company.

*BRIEF FACTS*

2. Petitioner is a wholly owned subsidiary of Manpower Holdings Inc USA and is engaged in the business of providing manpower related services. In the petition, it has been averred that the petitioner has been operating on very low profit margin and as per the latest available audited accounts for financial year (FY) 2018-19, the net margin of petitioner is @ 0.26%. It is further averred that in the case of petitioner, the ratio of tax deduction at source (hereinafter referred to as 'TDS') to profits has been as high as 1758% in the recent past and the petitioner company has refunds due and payable totalling to Rs. 128 crores, which have arisen essentially on account of high rate of TDS.

3. It is stated that for the financial year 2020-2021, the petitioner vide application dated 28th February, 2020 under Section 197 of the Act, gave a detailed representation to the respondent no.2 for issuance of low tax deduction certificate [hereinafter referred to as 'LTDC' ] at 'Nil' rate. The said application was decided vide order dated 29th June, 2020 (impugned order) wherein the petitioner's request for 'Nil' rate certificate was rejected. The petitioner challenged the said order before this Court by way of WP(C) 4511/2020 which was disposed of vide order dated 24th July, 2020 with a direction to the respondent to furnish reasons for the impugned order. In pursuance to the order dated 24th July, 2020 passed by this Court, the respondent vide letter dated 31st July, 2020 (impugned reasons) supplied the detailed reasons to the petitioner as to why it had fixed the rate of 0.50% under Section 194C and 1.50% under Sections 194J and 194I of the Act. Being aggrieved by the impugned order and reasons, the petitioner is before this Court.

*ARGUMENTS ON BEHALF OF THE PETITIONER*

4. Mr. Piyush Kaushik, learned counsel for the petitioner contended that the impugned order was contrary to the rule of consistency as the 1.50% rate with respect to payment under Sections 194J and 194I of the Act specified in the impugned order was three times higher than the 0.50% rate of tax deduction at source determined in the immediately preceding year by the respondent.

5. He stated that though the respondent itself admitted in the impugned order/reasons that the estimated tax liability of petitioner for financial year 2020-21 was Nil; that the average tax rate to turnover was 0.12% for the last 3 years; that the existing TAN demand was Nil (as on the date of filing of application under Section 197) and the PAN demand was Rs.1,49,530 as against the huge outstanding refund of Rs.138 crores (as on the date of filing of application under Section 197), yet the respondent stipulated TDS rate of 1.50% under Sections 194J and 194I and TDS rate of 0.50% under Section 194C on an arbitrary basis which was not based on any working. He emphasised that it was an admitted position that vide the impugned order/reasons, the conditions of mandatory Rule 28AA were satisfied, yet the respondent had arbitrarily prescribed the aforesaid TDS rates.

*ARGUMENTS ON BEHALF OF THE RESPONDENT*

6. *Per contra*, Ms. Lakshmi Gurung, learned senior standing counsel for respondent submitted that the present writ petition was not maintainable as the petitioner had not exhausted the alternate efficacious remedy of revision available under Section 264 of the Act. She emphasized that the petitioner

had availed this remedy in the immediately preceding year. She relied 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. The relevant portion of the same is reproduced hereinbelow:-

> *"6. Mr. Sanjeev Sabharwal, learned counsel appearing for the Revenue, submitted that the petitioner can challenge the said order in a revision under section 264(2) of the Act.*
>
> *7. In view of the aforesaid, we are not inclined to entertain the writ petition at present. However, we state that if the petitioner would file a revision within a period of two weeks challenging the order passed by the Assessing Officer on all grounds including that the said authority could not have taken recourse qua the Act, the revisional authority, namely, the Commissioner, Income-tax, shall decide the revision adverting to all the issues within a period of three weeks positively…."*

7. She further submitted 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 rate prescribed in the certificate, but against the decision making process. She submitted 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 relied upon the judgment dated 20th December, 2019 passed by this Court in ***National Petroleum Construction Company vs. Deputy Commissioner of Income Tax, Circle-2(2)(2)***.

8. Learned senior standing counsel for the respondent contended that the petitioner had misrepresented facts before this Court. She pointed out that in

the application made by the Petitioner for LTDC under Section 197, it had stated that the nature of payments, for which deductions under Section 194J were claimed, was professional services – for which the statutory rate for TDS was 10%; however in the present writ petition, petitioner had changed its stand and was claiming that the payments due to it were for technical services for which a rate of 2% was applicable under the statute.

9. She emphasised that the petitioner had been provided relief by the Income Tax Department by extension of certificate for financial year 2019-20 upto June 2020 at the same rate as financial year 2019-20. She stated that in financial year 2019-2020 on an application filed under Section 197, the petitioner had been issued LTDC at the rate of 1% under Sections 194C and 194I(a), 4% under Section 194J and 2% under Section 194I(b).

10. She pointed out that against the said LTDC, the petitioner had filed a revision petition under Section 264 of the Act, wherein the rates were revised to 0.50% under Sections 194C, 194I(a), 194I(b) and 194J w.e.f. 07th November, 2019. She submitted that the tax liability depended on the estimated profits, which in turn, depended on the turnover. She stated that in financial year 2020-21, the petitioner had itself projected a rise of more than 77.85% in the turnover.

11. She also relied upon the impugned reasons provided vide letter dated 31st July, 2020 to contend that there had been a drastic decrease in the profit before tax as a percentage of Gross Revenue. She stated that while in the financial year 2016-17 profit before tax was 1.66%, in the financial year 2017-2018 it was 1.51%; while in 2019-2020 it was 0.25% and the projected ratio for financial year 2020-2021 was 0.19%.

12. Since Ms. Lakshmi Gurung had relied upon para 4 of the impugned

reasons framed by respondent as provided vide letter dated 31st July, 2020, the same is reproduced hereinbelow:-

*"4. The applicant had been issued Lower Deduction certificate of 1% u/s l94C, 1% 194I(a), 4% u/s l94J, and 2% for 194I(b) for FY 2019-20 which was revised to 0.50% u/s I94C, 1941(a), 194J, 194I(b) with effect from 07.11.2019 by an order u/s 264 of the Income Tax Act, 19.61 .*

| | *Rate of Low Tax Deduction Certificate issued on 09.05.2019* | *Revised Order u/s 264 Dated 07.11.2019* | *Average Rate for the year (approx)* |
|---|---|---|---|
| ***FY 2019-20*** | *1% u/s 194C* | *0.50% u/s 194C* | *0.78%* |
| | *1% 194I(a)* | *0.50% u/s 194I(a)* | *0.78%* |
| | *4% 194IJ* | *0.50% u/s 194J* | *2.45%* |
| | *2% 194I(b)* | *0.50% u/s 19I(b)* | *1.35%* |

13. She lastly stated, without prejudice to aforesaid, that if the petitioner applies afresh with correct description of nature of service, the Department will expeditiously issue a certificate within two weeks, keeping in view peculiar facts of the present case.

*REJOINDER ARGUMENTS ON BEHALF OF THE PETITIONER*

14. In rejoinder, Mr. Piyush Kaushik, learned counsel for petitioner stated that an order under Section 197 of the Act is to be passed after a final decision is taken by the CIT on the application. He pointed out that in para No.7 of the impugned order it was stated that the approval from CIT had been sought on the TRACES Portal. Consequently, according to him, the order under Section 197 of the Act cannot be subject to revision under Section 264 of the Act by the CIT. In support of his submission, he relied upon the judgment of the Karnataka High Court in ***CIT vs. Smt.***

***Annapoornama Chandrashekar, 17 taxmann.com 120 (Kar)*** wherein it has been held that an assessment order passed after approval from Commissioner cannot be subject to revision by Commissioner.

15. He also stated that this Court had entertained writ petitions against orders issued under Section 197 of the Act. In support of his submission, he relied upon the judgment of this Court in ***Bently Nevada LLC vs. Income Tax Officer, Ward-1(1)(2), (2019) 107 taxmann.com 440 (Del.)***. He pointed out that the said judgment had been passed after the petitioner had filed a revision petition for the preceding year.

16. He further submitted that in taxation matters the principles of *res judicata* and estoppel were not applicable and the same cannot be invoked to debar any valid claim of assessee in subsequent years. In support of his submission, he relied upon the Constitution Bench judgment of the Supreme Court in ***Installment Supply P. Ltd. vs. Union of India, AIR 1962 SC 53***.

17. He lastly stated that the petitioner had not claimed anywhere in the present petition that the payments received by it were in the nature of 'technical services subject to 2% rate' as sought to be contended by the respondent.

*COURT'S REASONING*

*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'*

18. This Court is of the view that the present writ petition is maintainable as there is no efficacious alternate remedy available to the petitioner to challenge the impugned order. In fact, the Commissioner of Income Tax

can entertain a revision petition under Section 264 only when the order, which is the subject matter of revision is passed by an authority subordinate to him. Further, the Notification No.08/2018 dated 31st December, 2018 issued by the CBDT mandates that the decision under Section 197 with effect from 31st December, 2018 has to be taken by the Commissioner i.e. after a conscious application of mind. It has also been unequivocally admitted by respondent in para 7 of the impugned order that approval of higher authorities was taken on the online TRACES portal.

19. Consequently, this Court finds merit in the submission of the petitioner 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'*.

20. The Karnataka High Court in ***CIT vs. Smt. Annapoornama Chandrashekar*** (supra), while discussing the scope of revisional jurisdiction of the CIT with respect to an order passed after approval of CIT under Section 158BC read with Section 158BG, held as under:-

> *"11. It was contended that it is an administrative order. Even the order of assessment is an administrative order and therefore the previous approval to make such an order valid cannot be other than an administrative approval. But, the question is, once an approval is accorded by the Commissioner can he sit in judgment over such an order and find fault with such order on the ground that it is erroneous and is prejudicial to the interest of the revenue. The question arises if to make the said order, previous approval of the Commissioner is a condition precedent, was Commissioner not expected to look into the draft block assessment order placed before him for approval to find out whether the said order is lawful and whether the said order is prejudicial to the interest of the revenue. If it was prejudicial to the interest of the revenue or if it is not*

*lawful he was not obliged to accord approval. What he proposes to do under Section 263 of the Act, he should have done at the of stage approval. Because in a block assessment proceedings, the tax to be levied under Section 113 of the Act is 60% and it is in respect of an undisclosed income which will have serious consequences on the assessee the legislature thought it fit to introduce Section 158BG providing for previous approval to ensure that the said provision is not abused by the lower authorities. In fact the word 'approval' is not defined under the Act. The dictionary meaning of the word 'approval' means 'to agree' in P. Ramanatha Aiyar's The Law Lexicon' the word 'approval' and is clearly brought about as under: -*

> *'"Approval' and 'permission' Ordinarily the difference between the approval and permission is, that in the first the act holds goods until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous Act.*
> *Approval of a person means that, and only that, which he has, with full knowledge, approved.*
> *Approve. To accept as good or sufficient for the purpose intended. To pronounce good. To accept as good or sufficient for the purpose intended; to confirm authoritatively.*
> *Approved. When one of the parties to a bargain writes 'approved' at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyances."*

*14. Therefore, it is clear approval means to agree with full knowledge of the contents of what is approved and pronounce it as good. In other words confirm authoritatively. When the power of such approval is vested in a higher authority, when such higher authority approves an order of the lower authority, which means he has gone through the order of the lower authority, he has no reason to disagree he finds no fault with that order and therefore he*

*confirms the order by his approval. It is to be seen that the statute has not used merely the word 'approval'. The word used is 'previous approval'. Therefore, unless the approval is previously taken, the assessment order would have no value at all. Therefore, when previous approval is a condition precedent and approval means to 'agree', i.e., to concur, to give mutual assent, to come into harmony, it is possible only after application of mind by the authority according approval.*

*xxx xxx xxx*

*17. Therefore, this power conferred on the Commissioner is in the nature of supervisory power. If he finds that the order passed by the Assessing Officer is erroneous and also prejudicial to the interest of the Revenue, after examining the record or any proceedings under the Act to rectify such error and to protect the interest of the Revenue he can exercise the said power, because, the Commissioner becomes aware of such erroneous orders prejudicial to the revenue after looking into the record. But, if he has looked into the record, applied his mind and agreed with the order of the Assessing Authority, this power of revision under Section 263 is not available to him after according approval to such order.....*

(emphasis supplied)

21. The Bombay High Court in ***Tata Teleservices (Maharashtra) Vs. The Deputy Commissioner of Income tax, (Writ Petition No.2701/2017, decided on 25th January, 2018)***, has also held as under:-

*"15. However, as correctly pointed out by the Petitioner in this case, the impugned order dated 23 October 2017 as recorded therein, has been issued/ decided with the concurrence of the CIT (TDS). This was not so in the case of Larsen & Toubro (supra). It is also not disputed before us that in this case, the Revision would be before the same authority who gave the concurrence or to an authority of equal rank/designation.*

*16. In the above view, the decision of this Court in Larsen & Toubro Ltd., (supra) would not apply to the present facts. As*

> *in this case, the Revision i.e. alternative remedy would in facts be from "Caesar to Caesar." Therefore, in such a case an alternative remedy would be a futile/empty formality and not an efficacious remedy. (Please see Ram & Shyam Co. v/s. State of Haryana 1985 (3) SCC 267).”*
>
> *(emphasis supplied)*

22. It is pertinent to note that the decision of this Court in the case of ***Sis Live*** (supra) was passed prior to the introduction of procedure vide CBDT Notification No. 08/2018 dated 31st December, 2018 requiring approval of the CIT for the purpose of an application under Section 197 of the Act. Consequently, the decision in ***Sis Live*** (supra) does not apply to the present case.

*THERE IS NO NEED FOR ANY DIRECTION TO BE GIVEN TO THE PETITIONER TO FILE A FRESH APPLICATION UNDER SECTION 197 OF THE ACT AS THE PETITIONER HAS NOT CLAIMED THAT THE PAYMENTS RECEIVED BY IT ARE IN THE NATURE OF TECHNICAL SERVICES SUBJECT TO 2% RATE. FURTHER, THE RESPONDENT HAS ITSELF ADMITTED IN PARA 7 OF THE IMPUGNED REASONS THAT THE NATURE OF SERVICES OF PETITIONER IS ‘CONSULTANCY’ WHICH FALLS UNDER DEFINITION OF "FEES FOR TECHNICAL SERVICES"*

23. In the present writ petition, the petitioner has not claimed that the payments received by it are in the nature of technical services subject to 2% rate. Further, the respondent has itself admitted in para 7 of the impugned reasons that the nature of services of petitioner is ‘Consultancy’ which falls under definition of "fees for technical services" subject to TDS rate of 1.50% for the current financial year 2020-21. Consequently, there is no need for any direction to be given to the petitioner to file a fresh application under Section 197 of the Act.

*THE RESPONDENT COULD NOT HAVE RELIED UPON THE INITIAL RATES OF 2019-20, WHICH HAVE BEEN SET-ASIDE/SUPERSEDED, TO DETERMINE THE AVERAGE RATE OF TDS. FURTHER, RESPONDENTS' RELIANCE ON PARA 4 OF THE IMPUGNED ORDER IS MISPLACED AS THE BASIS/REASONING FOR THE IMPUGNED ORDER IS TO BE FOUND IN PARA 7.*

24. This Court is also of the view that the reliance placed by the respondent upon para no.4 of the impugned reasons is misplaced inasmuch as the rates mentioned therein have been superseded by the subsequent order dated 7th November, 2019 passed by the CIT under Section 264 of the Act. Accordingly, the respondent could not have relied upon the initial rates of 2019-20, which have been set-aside/superseded, to determine the average rate of TDS. Further, respondents' reliance on para 4 of the impugned order is misplaced as the basis/reasoning for the impugned order is to be found in para 7 and not para 4. Para 7 of the impugned order reads as under:-

> *"7. Thus on the basis of the above mentioned analysis of the facts and circumstances of the business by the Assessing Officer at his level, the following was recommended separately to the higher authorities on the TRACES portal for grant of approval of LTDC certificate against the request of the applicant :*
>
> *"**M/s** MANPOWER SERVICES INDIA PRIVATE LIMITED (the assessee) is a company engaged in the **business of Consultancy services**. The assessee has applied certificate for deduction at lower rate u/s 197 of Income-tax Act, 1961 ('the Act') @ 0% in respect of receipts under section 194C.*

| *S. No* | *SECTION* | *No. of Parties* | *AMOUNT* |
|---|---|---|---|
| *1* | *194C* | *186* | *953,24,98,788/-* |
| *2* | *194J* | *153* | *2682,85,26,105/-* |
| *3* | *1941(b)* | *2* | *3,51,90,000/-* |
| ***Total*** | | | ***3639,62,14,893/-*** |

***1.Financials:***

| ***F.Y.*** | ***Gross Receipt*** | ***Gross Total Income/Loss*** | ***Returned Income as per ITR/computation*** | ***Tax Paid /payable*** | ***%tax*** |
|---|---|---|---|---|---|
| *2017-2018* | *14666200000* | *210239198* | *265872434 (under MAT)* | *56741431 (under MAT)* | *0.38* |
| *2018-2019* | *19543760722* | *115230429* | *Nil* | *Nil* | *0* |
| *2019-20(prov.)* | *20463730388* | *86830446* | *Nil* | *Nil* | *0* |
| *2020-21(Prov.)* | *36396214893* | *109972137* | *Nil* | *Nil* | *0* |

***2. Comparison of projected and provisional for last two FY:***

| ***FY 2019-20*** | | | | ***FY 2018-19*** | | | |
|---|---|---|---|---|---|---|---|
| ***Turnover*** | | ***Total income*** | | ***Turnover*** | | ***Total income*** | |
| *Projected (last year)* | *Provisional (this year)* | *Projected (last year)* | *Provisional (this year)* | *Projected (last year)* | *Audited (this year)* | *Projected (last year)* | *Audited (this year)* |
| *24398297372* | *20463730388* | *152053220 (MAT)* | *Nil* | *19543760722* | *17041375792* | *74760313 (MAT)* | *Nil* |

***3.TDS/TCS deducted Advance Tax Paid:***

| *F.Y* | *Advance Tax/self assessment tax Paid* | *TDS/TCS deducted* | *Refund* |
|---|---|---|---|
| *2017-18* | | *334708508* | *277967077* |
| *2018-2019* | *-* | *790469276* | *790469280* |
| *2019-20* | *-* | *584687229* | *584687229* |
| *2020-21* | *-* | *727924298* | *691760424* |

***4.143(3) Assessment proceedings:***

| *AY* | *Income as per Assessee* | *Income determine by AO* |
|---|---|---|
| *2013-14* | *Unabsorbed deprecation Rs. 50,49,283/-* | *Same is accepted by AO and declared income as Rs. NIL* |
| *2014-15* | *Unabsorbed deprecation/Loss 40075064/-* | *Same is accepted by AO and declared income at Rs. NIL* |
| *2015-16* | *B/F losses but assessee paid tax on MAT 38494030/-* | *Same is accepted by AO and declared income at Rs. NIL* |
| *2017-18* | *Income declared Rs.5,48,76,570/-* | *AO enhance income to Rs. 5,49,43,160/-* |

***5.TAN/PAN demands:*** *TAN Demand – Nil/- PAN Demand – 1,49,530/-*

***Form 3CD Defaults:***

| *F.Y* | *Form 3CD* | *40a(ia)Disallowances* | *LPI* |
|---|---|---|---|
| *2015-16* | *Yes* | - | - |
| *2016-17* | *Yes* | - | - |
| *2017-18* | *Yes* | - | - |

***6.Tax rates:***

- *Average tax rate to Turnover is 0.12% for last 3 years.*
- *Projected rate of tax for this FY 202-21 is 0%.*
- *Requested for LTDC @ 0% (u/s 194 C & 194J)*
- *LTDC issued was @ 1% u/s 194C, 1% 1941(a) and 4% u/s 194J and 2% for 1941(b) for FY 2019-20. However, revenue foregone was Rs.106,14,44,080/-.*
- *Order u/s 264 was passed u/s 1941(a), 1941(b) & 194C @ 0.50% for FY 2019-20.*

***7.Revenue forgone:***

- *Proposed rate by AO is @ 0.50% u/s 194C, @ 1.50% 194J & 1941(b) for FY 2020-21.*

- *The revenue foregone as per propose rate will be Rs.2426403350/-*

*The case of the applicant has been selected under scrutiny for AY 18-19 with CASS reasons which include claim of large value refund and substantial deduction under Chapter VI-A/*
*The propose rate will protect revenue interest and it is proposed after consideration of facts of the case. So, the application is being forwarded for your kind consideration and direction."*

*For your kind information.*

*Your's sincerely*
*Sd/-*
*ACIT C-75(1)*
*TDS, Delhi"*

*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. CONSEQUENTLY, THE IMPUGNED ORDER IS QUASHED ON THE GROUND THAT THE DECISION MAKING PROCESS IN THE PRESENT CASE IS CONTRARY TO LAW.*

25. However, this Court is in agreement with the submission of learned standing counsel for the respondent that it is the decision making process and not the decision that can be impugned in a writ petition. To appreciate the decision making process, it is necessary to outline the provision under which the TDS rates have to be determined under Section 197 of the Act. Rule 28AA of the Income Tax Rules prescribes the procedure to be followed by the assessing officer in determining the 'existing and estimated liability'. 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 sub-rule (1) of rule 28];"*
>
> (emphasis supplied)

26. Perusal of the aforesaid Rule shows that the considerations prescribed under clause (2) are mandatory and the department is bound to determine the yearly TDS rates on the four parameters prescribed therein.

27. It is settled law that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated [See: ***Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82*** and ***Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors***.; ***(1979) 3 SCC 489***]. Consequently, the assessing officer cannot ignore the mandate of Rule 28AA and proceed on any other basis.

28. However, in the present case, the assessing officer has not followed the aforesaid rule as there is no reference in the impugned reason to any computation carried out under Rule 28AA.

29. In fact, this Court vide order dated 8th December, 2020 had granted time to the respondent to place on record the computation of TDS rates under Rule 28AA, if any. Despite the said opportunity, neither any computation was filed nor was any reasonable explanation given as to why the computation under Rule 28AA was not carried out. Consequently, this Court is of the opinion that the impugned order is liable to be quashed on the ground that the decision making process in the present case is contrary to law.

*RELIEF*

30. 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 respondent no.2 for fresh determination in accordance with law as expeditiously as possible preferably within a period of two weeks.

31. In the interim, we direct that the benefit of revised TDS rates prescribed for financial year 2019-2020 (by respondent no.1 vide order dated 7th November, 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.

32. Respondents should ensure compliance of this order forthwith.

33. With the aforesaid directions, the writ petition is allowed and pending application(s) stand disposed of.

**MANMOHAN, J**

**SANJEEV NARULA, J**

**DECEMBER 21, 2020**
KA