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

+ W.P.(C) 11083/2021 & C.M.No.34159/2021

XCHANGING TECHNOLOGY SERVICES INDIA PRIVATE
LIMITED

..... Petitioner

Through Mr.Kamal Sawhney with Mr.Prashant
Meharchandani, Mr.Nitin Agarwal,
Mr.Arun Bhaduria and Mr.Divyansh
Singh, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-7 DELHI, &
ANR.

..... Respondents

Through Mr.Sunil Kumar Agarwal, Advocate.

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Date of Decision: 30th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the order dated 31st March 2021 for Assessment Year 2018-19 passed under Section 264 of the Income Tax Act, 1961. Petitioner also seeks directions to Respondent No.2 to issue refund amounting to INR 71,41,29,257/-, on account of excess Dividend Distribution Tax (DDT) paid, within a time bound period. Petitioner also seeks a declaration that Section 115-O be read in a manner that is not inconsistent with Article 10 and other provisions of the India-Mauritius DTAA.



2. Learned Counsel for the Petitioner states that the beneficial rate of 5% prescribed under Article 10(2) of the India- Mauritius DTAA shall prevail over the DDT rate of 15% (20.36% after grossing up with 15% rate as provided u/s 115-O of the Act plus applicable surcharge and cess).

3. Learned Counsel for the Petitioner states that the Respondent No. 1 has rejected Petitioner's request for refund of the DDT paid in excess of the beneficial rate provided under the DTAA by refusing to follow the binding decision of the jurisdictional ITAT Delhi in *Giesecke & Devrient (India) Pvt. Ltd. v. Addl CIT (ITA 7075/Del/2017)* which squarely covers the issue, even after carrying out a detailed enquiry on the Petitioner's claim and despite accepting that the said decision squarely covers the issue raised by the Petitioner. He states that the Respondent has decided not to follow a binding decision by simply stating that the department had yet to make up its mind about filing an appeal against *Giesecke & Devrient (India)* (supra). He points out that this is in gross violation of judicial discipline even after not being able to refute that the said decision was squarely applicable to the Petitioner.

4. Learned Counsel for the Petitioner relies on the decision in *Riso India Private Limited v. PCIT, W.P.(C) 6809/2021* wherein this Court has quashed an identical order under Section 264 of the Act.

5. Issue notice. Mr. Sunil Kumar Agrawal, learned counsel for respondents, accepts notice. He submits that the matter pertains to the period during which Dividend Distribution Tax regime under Section 115-O was prevalent. Under this system, the tax on distributed profits was to be borne by the Company distributing the dividends, and subsequently the dividends received by shareholders post payment of Dividend



Distribution Tax by the Company was statutorily exempted from tax under Section 10 of the Act. He states that this scheme of Dividend Distribution Tax has been construed by Hon'ble Supreme Court in the case of **Godrej & Boyce Manufacturing Co.Ltd. v. DCIT [(2017) 394 ITR 449 (SC)]**. In view of the same, he further submits that the rate of tax on distributed profits that is applicable is the one stipulated under section 115-O of the Income Tax Act and not the one prescribed under Article 10 of the DTAA, because the rate of tax in the hands of the shareholders is more beneficial under the Income Tax Act as compared to the DTAA.

6. Upon hearing the counsel for the parties, this Court finds that the respondents have dismissed the petitioner's revision petition without giving any reason on merits, except stating that the petition was premature, as according to the learned Commissioner, the Revenue still had time to file an appeal against the ITAT judgment in the case of **Giesecke & Devrient (India)** (Supra). The relevant portion of the impugned order is reproduced hereinbelow:-

“7. I find that the submissions of the assessee in the present petition substantially draw from and are based on the discussion in the aforesaid order of ITAT in the case of M/s Giesecke & Devrient [India] Pvt. vs. Addl. CIT, Special Range-04, New Delhi [ITA No.7075/DEL/2017]. However, I note that this judgment was delivered on 13.10.2020 and the Income Tax Department still has time to take decision on filing of appeal, if any, against the said judgment. As such, it cannot be said that the Department has accepted or acquiesced in the judgment of ITAT on the above issues on merit, and the legal position of the question involved is not yet settled. Hence a remedy under Section 264, as requested, is pre-mature.”



8. As such, without going into the merits of the grounds raised by the assessee, I, in view of the above facts and legal position, decline to interfere with the order passed by Assessing Officer on 29.01.2020”

7. Consequently, from the aforesaid, it is apparent that the learned Commissioner has neither applied its mind to the controversy at hand nor passed a reasoned order. Accordingly, the impugned order dated 31st March, 2021 is set aside and the matter is remanded back to the respondent-PCIT, Delhi-7 for passing a reasoned order within six weeks after giving an opportunity of hearing to the petitioner. This Court clarifies that it has not expressed any opinion on merits of the controversy. All rights and contentions of the parties are left open. In the event the petitioner is aggrieved by the decision of the respondent, it shall be open to the petitioner to file appropriate proceedings in accordance with law. Accordingly, the present writ petition along with pending application stands disposed of.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 30, 2021

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