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

+ W.P.(C) 4548/2022 & CM APPLs.13653-13654/2022

VODAFONE LUXEMBOURG 5 S A R L ..... Petitioner

Through Ms. Fereshte D. Sethna with  
Ms. Anuradha Dutt, Mr. Sachit Jolly,  
Mr. Mrunal Parekh and Mr. Hasmukh  
Ravaria, Advs.

versus

INCOME TAX DEPARTMENT, CIRCLE INTERNATIONAL -  
TAX 3 (1)(1), DELHI AND ANR. .... Respondents

Through Mr. Sunil Agarwal, Sr. Standing  
Counsel with Mr. Tushar Gupta, Mr.  
Samarth Chaudhari, Advs.  
Mr. Ravi Prakash, CGSC.

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Date of Decision: 22<sup>nd</sup> March, 2022

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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

**MANMOHAN, J (Oral):**

1. Present writ petition has been filed by the petitioner challenging the impugned order dated 10<sup>th</sup> March, 2022, notice dated 30<sup>th</sup> March, 2021 under Section 148 of the Income Tax Act, 1961 (for short 'Act'), notices dated 3<sup>rd</sup> February, 2022 under Sections 143(2) and 142(1) read with Section 147 of the Act, issued by respondent No.1 and sanction issued under Section 151



dated 27<sup>th</sup> February, 2021 in the petitioner's case for the Assessment Year 2016-17.

2. Learned counsel for the petitioner submits that the impugned order and notices have been issued contrary to the settled legal position that where a foreign assessee has earned interest income on rupee denominated bonds issued by an Indian company as specified under Section 194LD of the Act, such income would be chargeable to tax at a concessional rate of five percent, and by virtue of Section 115A(5), such foreign entity would not be required to file a return of income in India under Section 139(1) of the Act. In support of her submission, she relies upon the judgment of this Court in *Nestle SA Vs. ACIT (IT), Circle (2)(2), New Delhi (2019) 417 ITR 213 (Delhi)*.

3. Issue notice. Mr. Sunil Agarwal, learned counsel accepts notice on behalf of respondents. He has handed over the instruction received by him from Deputy Commissioner of Income Tax, Circle 3 (1) (1), International Taxation, New Delhi. The said instruction is reproduced as under:-

*“In this regard, it is informed that the assessee has only furnished its audited financial statements vide response dated 8<sup>th</sup> March, 2022 till date. No other document such as the underlying debenture subscription agreement, FPI certification, TRC, and any other document necessary to substantiate its eligibility for 194 LD of the Income-tax Act has been furnished by the assessee till date before the office of the undersigned. Once such documents are provided, the case of the assessee will be decided on merits in accordance with the provisions of law.”*

4. Mr. Agarwal, learned counsel for Revenue emphasises that the petitioner's case has been selected for reassessment only on the ground that the respondents has doubted as to whether interest was received by the



petitioner-assessee on rupee denominated bonds issued by an Indian company or a dollar denominated bonds issued by an Indian company.

5. However, a perusal of the paper book reveals that petitioner's case was selected for re-assessment on the ground that petitioner's case was flagged in the Non-filers Monitoring System (NMS). Consequently, there is a contradiction between the reason given by the respondent in the re-assessment notice and the defence taken by the respondent in the present proceeding.

6. Keeping in view the aforesaid, this Court quashes the impugned order and notices mentioned hereinabove and permits the respondent-revenue to issue a fresh re-assessment notice in accordance with law. The rights and contentions of all the parties are left open.

**MANMOHAN, J**

**DINESH KUMAR SHARMA, J**

**MARCH 22, 2022**  
**AS**

सत्यमेव जयते