



2026:DHC:820-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 28.01.2026*

+ W.P.(C) 7633/2025, CM APPL. 34030/2025

TRAVELPORT INTERNATIONAL OPERATIONS LIMITED

.....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Manuj Sabharwal, Mr. Drona Negi and Mr. Devvrat Tiwari, Advs.

versus

DEPUTY COMMISSIONER OF INCOME-TAX CIRCLE INT. TAX 3(1)(1), DELHI & ORS.Respondents

Through: Mr. Siddhartha Sinha, SSC and Ms. Easha Gurung, JSC

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VINOD KUMAR****JUDGMENT****DINESH MEHTA, J. (ORAL)**

1. By way of the present writ petition, the petitioner has challenged the order dated 24.04.2025 passed by the Circle INT TAX 3(1)(1) DEL (*hereinafter referred to as 'the competent authority'*) whereby the petitioner's application under Section 197 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) for the Assessment Year (AY) 2025-26 has been decided in the manner that the payer(s) making payment to the petitioner are required to deduct tax at the rate of 1.6%. The



certificate dated 17.04.2025 issued in furtherance thereof has also been challenged.

2. The petitioner is a company incorporated in the United Kingdom and for the purposes of Income Tax, a tax resident of the United Kingdom. The petitioner is engaged in providing electronic global distribution services (GDS) to the travel industry globally, through an automated Computer Reservation System (CRS). The services are provided to various airlines, and for each completed booking, the petitioner receives booking fees from the airlines. The petitioner receives some amount/commission in India, for which a lower tax withholding certificate was prayed.

3. Mr. Ajay Vohra, learned Senior Counsel for the petitioner, submitted that it had been held by the Income Tax Appellate Tribunal (*hereinafter referred to as the 'tribunal'*) and upheld upto the Hon'ble Supreme Court that only 15% of its receipts is to be reckoned as revenue is attributable to its Permanent Establishment (*hereinafter referred to as 'PE'*). He also submitted that it is undisputed that 68% being the commission which the petitioner-company is paying to its Indian agent is required to be deducted from such revenue to arrive at profit earned in India.

4. While highlighting that these two facts are undisputed (which even the competent authority has accepted in the impugned order) Mr. Vohra, learned Senior Counsel argued that while passing the aforesaid order, the competent authority has deducted only 15% of the expenses part (i.e. 15% of 68%) whereas the same ought to have been deducted in its entirety.

5. He navigated the Court through the table given at page 8 of the impugned order and argued that if the estimated receipts are taken at Rs.100/-, the revenue of the PE (15%) comes to Rs.15 and then, the entire



Rs.68 as commission ought to have been deducted as expenses, which would result in negative profit. He added that if calculated correctly, there arises no question of income in India.

6. He prayed that the impugned certificate deserves be set-aside and the respondents be directed to issue a tax withholding certificate of NIL rate of tax.

7. Mr. Siddhartha Sinha, learned Senior Standing Counsel for the respondents on the other hand, submitted that the competent authority has passed a detailed and reasoned order and that the Court cannot enter into fact-finding exercise. Inviting Court's attention towards the table given on page 7 of the impugned order, he submitted that Mr. Vohra, learned Senior Counsel has talked about revenue from India Point of Sales (POS) only, whereas the income in the hands of the petitioner from non-India POS is also taxable as the persons have travelled to India on the basis of sale of the tickets booked from the petitioner's portals or by availing abroad the online services provided by it.

8. He asserted that the AO for the past four years has raised demand on this count. He further submitted that none of the petitioner's appeal filed thereagainst has yet been decided by the Commissioner, Income Tax (Appeals) and on the other hand, by way of a recent order dated 16.01.2026, the Dispute Resolution Panel (DRP) has also decided this issue against the petitioner. He argued that in the face of such findings, neither any fault can be found in the order impugned nor can a certificate of NIL rate be granted to it.

9. He apprehended that in case the certificate of NIL rate is issued, the petitioner's case will not be taken up for scrutiny assessment as per the



prevalent parameters and in such case the transaction of the petitioner (if taxable), will escape tax liability. He prayed that since a meager 1.6% is required to be deducted from the payments, no interference be made. He submitted that in any case, TDS is only an advance tax which the petitioner shall be refunded after adjustment of applicable tax payable.

10. Mr. Vohra, learned Senior Counsel in his rejoinder arguments submitted that the respondent's apprehension is misplaced and argument untenable because, the petitioner has been filing its return of income every year. He added that the assessment orders which have been passed by the competent authority are also unsustainable on their face, as the Government of India has no authority or power to tax the income which has not even accrued in India. He argued that simply because the travelers purchasing tickets from the agents situate outside India have travelled to India, commissions arising therefrom cannot be taxed in India, as no taxable event has taken place in India.

11. Heard.

12. There is no gain saying the fact that the second issue, the non-India POS on which the AO has created demand, is yet to be decided by the Appellate Authority and/or the Tribunal in accordance with law. Resultantly, for the last four years, the Assessing Officer's view is against the petitioner. We therefore, refrain from recording any finding or making observation so far as the exigibility of the income tax on the transactions from non-India POS are concerned.

13. Moving on to the first issue, it is a trite position that the revenue attributable to its India PE is to be taken as 15% in light of the judgement of Hon'ble the Supreme Court in petitioner's own case - *DIT v. Travelport*



Inc. reported in [2017] 398 ITR 593 (SC). For the sake of ready reference paragraph 9 thereof is reproduced hereinfra:

“9. Appeals were filed by the respondents before the Tribunal and the Revenue also filed cross objections on a different aspect about which, we are not now concerned. The Tribunal held that the respondents herein constituted Permanent Establishment (‘PE’) in two forms, namely, fixed place PE and dependent agent PE (‘DAPE’). At the same time, the Tribunal also held that the Lion’s share of activity was 5 C.A. NOS. 6511-6518/2010 processed in the host computers in USA/Europe and that the activities in India were only minuscule in nature. Therefore, as regards attribution to the PE constituted in India, the Tribunal assessed it at 15% of the revenue and held, on the basis of the functions performed, assets used and risks undertaken (FAR) that this 15% of the total revenue was the income accruing or arising in India. This 15% worked out to 0.45 cents. But the payment made to the distribution agents was USD 1/EURO 1 in many cases and much more in some cases. Therefore, the Tribunal held that no further income was taxable in India.”

14. The expression “was the income accruing or arising in India” in the 13th and 14th line of the above quoted paragraph, raised a doubt in our mind as to whether 15% of its receipts should be reckoned as revenue or income? But on perusal of the judgement particularly paragraph no. 9 and the order of the Tribunal, we are of the firm opinion that 15% of the commission is the revenue attributable to India PE. That is precisely what has been understood and taken by the competent authority in the order under challenge.

15. Hon’ble the Supreme Court has categorically observed and affirmed the position that 15% represents the quantum of revenue attributable to the Permanent Establishment in India, determined on the basis of the FAR analysis, and not a limit on the allowability of expenditure. As explained by



way paragraph 9 of the said judgment, once 15% of the total revenue was attributed to India, the entire commission paid to the distribution agents was liable to be deducted therefrom; and since such commission exceeded the attributed revenue, the Tribunal held that no further income was taxable in India.

16. The competent authority was therefore, required to deduct expenditure being the commission of 68% from the total revenue being 15% of the commission. If the commission being expenditure is subsumed from the revenue of the PE, then, the income shall obviously be negative, at least in the present scenario.

17. But, so far as the non-India POS is concerned, since the matter is pending before the appellate authority and for the last three/four years, the AO has been raising demand of tax on such income, we are of the view that may be we do not interfere at this juncture but in order to meet the ends of justice, it be expedient to direct that a certificate be issued in proportion to its receipts from non-India POS out of total revenue. Therefore, if the table given at page 7 of the impugned order is seen, the petitioner's total non-POS revenue is Rs. 246,83,69,000/- out of the total revenue of Rs. 1222,18,65,000/- which is about 20% or 1/5 of the estimated tax calculated by the respondents.

18. Such being the position, we set aside the impugned order dated 24.04.2025 passed by the competent authority and corresponding certificate dated 17.04.2025. The competent authority is directed to issue a fresh certificate providing deduction of tax at the rate of .5% ($1/5$ of 1.6% = .32 or rounded off .5%). We therefore direct that a fresh tax withholding certificate at 0.5% be issued within fifteen days from today.



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19. The writ petition is allowed accordingly. Pending applications are disposed of.

DINESH MEHTA, J.

VINOD KUMAR, J.

JANUARY 28, 2026/ss