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

% *Date of Decision : 29.01.2026*

+ W.P.(C) 17222/2025, CM APPL. 70857/2025  
BRANCH METRICS INC

.....Petitioner

Through: Mr. Sachit Jolly, Sr. Adv. with Ms. Mansha Anand, Mr. Sohun Dua, Mr. Abhyudaya Bajpyee, Ms. Manvi and Mr. Ghunain Siddiqui, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 1 1 2 NEW DELHI

.....Respondent

Through: Mr. Debesh Panda, SSC and Mr. Vikramaditya Singh, Ms. Zehra Khan, JSCs

**CORAM:**

**HON'BLE MR. JUSTICE DINESH MEHTA**

**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT**

**DINESH MEHTA, J. (ORAL)**

1. By way of the instant writ petition, the petitioner has challenged order dated 02.05.2025 passed by the office of the Circle Income Tax 1(1)(2) (*hereinafter referred to as 'competent authority'*) deciding petitioner's application under Section 197 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) and consequential certificate dated 18.06.2025 whereby the respondent has required its counterpart in India to deduct tax at the rate of 15% on the payments made and credited to the petitioner.

2. The petitioner is engaged in the business of providing Software as a Service ('SaaS') based products/offering which help its customers in



generating links which can be used to share content over social media, provide links to apps on app-store, links to websites in e-mails, etc. The customers can also obtain a report (strictly for internal use purpose) in order to determine the effectiveness of the petitioner's products. These products are directly provided to Indian customers under a contract/End User License Agreement ('EULA') and an order form between Indian customers and the petitioner. The petitioner provides off the shelf SaaS based products to the customers to install the same in their mobile application/ website.

3. Assailing the order dated 02.05.2025 and certificate dated 18.06.2025, Mr. Sachit Jolly, learned senior counsel for the petitioner argued that the competent authority has passed a mechanical order and has refused to accede to petitioner's request for grant of certificate at NIL rate (though the application mentioned 0.01%).

4. He submitted that while passing the impugned order, the competent authority has not at all considered the application that was filed by the petitioner and the submissions put forward and was merely guided by revenue's consideration. Though as per the petitioner, no tax is applicable/payable by it as the services rendered by the petitioner do not fall within the ambit for Fees for Included Services (FIS) or Fees for Technical Services (FTS) as defined in the Act of 1961.

5. Learned senior counsel submitted that if the treaty between India and the United States of America (in short 'US') is taken into account, more particularly the protocol thereof, marketing services are out of the ambit of FIS/FTS and therefore, the order impugned is wholly without application of mind.

6. While maintaining that the stance taken by the competent authority is



*per se* erroneous and unsustainable, he argued that the premise on which the impugned order rests, is the judgment of Authority for Advance Ruling (AAR) in the case of **Shell India Markets (P.) Ltd., In re** reported in [2012] 18 taxmann.com 46 (AAR-New Delhi), completely ignoring the fact that the same has been overruled by the Bombay High Court in **Shell India Markets Pvt. Ltd. v. Union of India and Others**, [2024] 463 ITR 222 (Bom).

7. Explaining in detail the nature of transactions, which the petitioner has undertaken in India, learned Senior counsel submitted that by no stretch of imagination any tax can be imposed or recovered from the petitioner which is a company based in USA.

8. Mr. Debesh Panda, learned Senior Standing Counsel appearing on behalf of the respondent on the other hand submitted that the facts as portrayed by the petitioner cannot be considered by this Court at this juncture inasmuch as it is beyond the scope of this Court in its jurisdiction under Article 226 of the Constitution of India to record finding about the nature of transaction as the fact finding exercise is to be done by the authorities under the Act of 1961.

9. He further submitted that two assessment orders have been passed by the Assessing Officer (AO) for Assessment Years (AY) 2021-22 dated 25.10.2023 and AY 2022-23 dated 14.01.2025 and after dealing with the material on record and taking into consideration the nature of transactions, the Jurisdictional Assessing Officer (JAO) of the petitioner has held its transactions to be taxable under the Act of 1961 and has levied tax at the rate of 10%.

10. He submitted that in the face of the findings as recorded by the AO,



order of the competent authority cannot be faulted with, more particularly when the petitioner-company was paying a 2% levy in the earlier year.

11. In rejoinder, Mr. Jolly, learned Senior Counsel for the petitioner submitted that the order passed by the AO gives an indication that it follows the finding of the Dispute Resolution Panel (DRP), appeal whereagainst is pending before the Income Tax Appellate Tribunal (*hereinafter referred to as 'Tribunal'*) and the judgment has been reserved by the Tribunal.

12. He submitted that the petitioner is hopeful of succeeding in the appeal and in any case, the certificate at NIL rate ought to be issued to it, as there is no possibility that the petitioner would not abide by and deposit any tax levied under the Act of 1961, subject of course to its right of challenging such order, if so advised.

13. As a via-media, it was suggested by Mr. Jolly that for the ensuing period, including year AY 2026-27, the respondent be directed to issue a certificate of NIL rate and once the appeal is decided by the Tribunal, subject of course to rights of either of the parties to challenge the same.

14. He alternatively submitted that since the petitioner has paid 2% equalization levy up to 31.03.2025, the respondent be directed to issue a certificate at the rate of 2% so as to meet the balance of equity.

15. Heard learned counsel for the parties.

16. Without recording any finding about the taxability of the transactions or prejudging the issue as to whether the services provided by the petitioner to the recipient(s) of services situate in India, are exigible to tax under the Act of 1961 read with the treaty, we are still of the firm view that the order passed by the competent authority on 02.05.2025 followed by issuance of certificate dated 18.06.2025 is not in accordance with law.



17. Firstly, because the competent authority has not considered the application and judgments which the petitioner had cited and has simply picked up the findings of the AO recorded in the assessment orders for AYs 2021-22 and 2022-23 and secondly, because it has placed strong reliance upon the judgment rendered by the AAR in the case of **Shell India Markets Private Limited** (order dated 12.01.2012 in AAR No. 833 of 2009), completely ignoring the fact that the same stands overruled by the Bombay High Court in the appeal filed by said assessee reported in [2024] 463 ITR 222 (Bom).

18. These two reasons are sufficient to set aside the impugned order which we hereby do. We are inclined to accept the petitioner's alternative plea that a certificate be directed to be issued at 2% rate (equal to the equalization levy), which a levy or amount the petitioner has been paying up to 31.03.2025.

19. The appeal of the petitioner against the order of DRP is pending before the Tribunal and pronouncement of the order of the Tribunal may take some more time. In the meanwhile, if at the end of financial year (i.e. on 31.03.2026), the petitioner's application for issuance of certificate under Section 197 of the Act of 1961 shall be rendered redundant. Hence, as a temporary measure, we direct the competent authority to issue a certificate under Section 197 of the Act of 1961 at 2% rate. Same shall be issued within a period of 15 days from today.

20. The impugned order, purportedly dated as 02.05.2025 and the certificate dated 18.06.2025 are hereby set aside.

21. The petition is accordingly partly allowed.

22. We hereby make it clear that our order shall apply only for the



certificate to be issued pursuant to the petitioner's application for AY 2026-27 (i.e. FY 2025-26).

23. For subsequent year(s), the competent authority shall consider the application in accordance with law subject of course to the order of the Tribunal. Any of the parties aggrieved with the order of the Tribunal shall obviously be free to assail the same in accordance with law.

24. As a parting remark, we would like to highlight that we have often noticed that the date of the order considering application under Section 197 and the date of issuance of certificate is not same. We are informed that the order often bears the date on which the application under Section 197 of the Act of 1961 has been filed. Due to this, an impression is often taken as if the issuance of the certificate has taken a long time after the application was processed or decided. The date on the order at multiple occasions bears the date of application that was filed by the applicant. The responsible authorities/CBDT are requested to address this issue.

25. The instant petition along with pending application stands disposed of.

**DINESH MEHTA, J**

**VINOD KUMAR, J**

**JANUARY 29, 2026/cd**