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

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Date of Decision : 25.03.2025+ **W.P.(C) 11376/2024 & CM APPL. 47223/2024**

LUFTHANSA CARGO AG

.....Petitioner

Through: Mr. Sujit Ghosh, Sr. Advocate with
Ms. Mannat Waraich & Mr. Ajinkya
Tiwari, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

.....Respondents

Through: Mr Puneet Rai, SSC, Mr Ashvini
Kumar and Mr Rishabh Nangia, SCs
and Mr Nikhil Jain, Advocate.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner has filed the present petition, *inter alia*, impugning an order passed on 03.05.2024 (incorrectly dated as 14.02.2024) [**impugned order**] by respondent no.1 [**AO**] under Section 195(3) of the Income Tax Act, 1961 [**the Act**], whereby the petitioner's application for issuance of a certificate under Section 195(3) of the Act was rejected. However, the petitioner was permitted to file an application under Section 197 of the Act, which, it did.

2. The petitioner applied for certificate from Income Tax Department for 'Nil' withholding tax from the payments made to the petitioner during the financial year [**FY**] 2024-25 and the certificate dated 17.05.2024 [**impugned**



certificate] was issued for withholding tax at a lower rate of 0.10 per cent. Accordingly, the petitioner impugns the certificate dated 17.05.2024 as well. It claims that its income from operating in aircrafts is not chargeable to tax in India.

3. The petitioner claims that it is engaged in the business of international cargo handling and transportation of cargo through operation of aircrafts in international traffic. According to the petitioner, its primary mode of operation involves working with various agents which are registered with the International Air Transport Association [**IATA**]. The petitioner claims that these agents generate airway bills for transportation of cargo and procure the petitioner's services based on the said airway bills.

4. The petitioner claims that it is a tax resident of Germany and its income is not chargeable to tax in India in terms of Article 8 of the India-Germany Double Taxation Avoidance Agreement [**the DTAA**].

5. In the given circumstances, the petitioner had moved an application under Section 195(3) of the Act for issuance of nil withholding tax Certificate for the FY 2024-25. The said application, in the prescribed form (Form 15D), was filed electronically on 14.02.2024.

6. As noted above, the said application was rejected by the impugned order dated 14.02.2024. The learned counsel appearing for the Revenue clarifies that the order dated 14.02.2024 was passed on 03.05.2024 and explains that the system used by the Revenue had picked up the date on which the application was lodged and reflected the same in the order as the date of order. The impugned order does not mention the date on which it



was issued.

7. The order dated 14.02.2024 indicates that the petitioner had also furnished an Indemnity Bond declaring that there is no income which is not covered under Article 8 of the DTAA. However, the petitioner's application was rejected on the ground that the petitioner had not brought material on record to show that it qualified for a deduction under Section 195(3) of the Act read with Rule 29B(1) and (2) of the Income Tax Rules, 1962 [**the Rules**]. The said order mentions that no financial statement for the previous year or projected financial statement was submitted. Further, no details had been submitted by the petitioner.

8. Paragraph 4 of the impugned order sets out the reasoning for rejecting the petitioner's application. The same is set out below:

“4. The application of the assessee along with relevant submissions and documents have been duly perused and analysed. On analysis, the following observations have been found:

1. The applicant has not brought out material on records to show that it qualifies for deduction u/s 195(3) r.w.s. rule 29B sub-rule (1) & 2.

2. No financial statement either of previous year or projected has been submitted.

3. No details of interest income, commission income, brokerage fee, DO charges, Cargo handling charges or other income of such nature has been submitted.

4. In para “4” of indemnity bond, the applicant acknowledges that if any income arises which is subject to tax in India then it would pay the same and file



ITR. This prima facies implies that there is likelihood of such income arising which is taxable in India.”

9. It is the petitioner’s case that it had in unambiguous terms stated that its income is generated only from cargo handling and operating aircrafts. Additionally, it was submitted that it had received some interest on refund of income tax for which tax was deposited. It is also not disputed that the petitioner provided the information as required in the prescribed form. The AO had also issued letter raising other queries which was also responded to by the petitioner.

10. The petitioner asserted that it has been furnishing its return of income regularly since the last past fourteen years and had also been issued certificates of nil withholding tax for the said years except for the FY 2019-20. This assertion was not controverted by the Revenue. In respect of the FY 2019-20, certificate under Section 197 for withholding tax at nil rate was denied and the AO had issued a certificate permitting withholding tax at a reduced rate of 0.5 percent. However, the petitioner had successfully assailed the same by filing a petition before this court being W.P.(C) 9163/2019 captioned *Lufthansa Cargo AG v. Deputy Commissioner of Income Tax & Another*. This court found that the AO had not considered the relevant material and accordingly, allowed the writ petition by setting aside the said order and remanding the matter to the AO for considering afresh.

11. Pursuant to the said order, the AO had examined the petitioner’s application afresh and had issued the certificate under Section 197 of the Act



for withholding the tax at nil rate for FY 2019-20. Thus, undisputedly, the petitioner has been granted certificates under Section 195(3)/197 of the Act for receiving the payment for services at nil withholding tax for more than a decade.

12. It is also the petitioner's case that the nature of its services or the income received has undergone no change and it continues to render the same services which were rendered in the prior years.

13. In the given circumstances, the impugned order passed by the AO rejecting the petitioner's application for certificate under Section 195(3) of the Act cannot be sustained. There is no ambiguity in the petitioner's explanation as to the nature of the services rendered by it and the AO has also not controverted the petitioner's assertion that its income for the services, as described by the petitioner, is not be chargeable to tax in India by virtue of Article 8 of the DTAA.

14. The AO had also granted the petitioner an opportunity to file an application under Section 197 of the Act for seeking a certificate for nil/reduced withholding tax. In view of the liberty granted, the petitioner had filed an application dated 20.04.2024 for issuance of the certificate at nil rate of withholding tax under Section 197(1) of the Act.

15. As noted above, this application was also rejected on 17.05.2024. The AO has not indicated any reasons which persuaded the AO to permit the payments from the specified agents at a lower rate of 0.10 percent withholding tax as against nil rate claimed by the petitioner. It is contended that the receipts at the reduced rate was allowed to the petitioner as against a



certificate for nil withholding tax for the protection of the Revenue.

16. In the given circumstances, where the petitioner has been granted certificate at nil withholding tax for prior assessment years and there is no issue to the chargeability of the petitioner's income to tax under the Act, the impugned certificate requiring withholding tax at reduced rate instead of nil rate, cannot be sustained. Although, this court was inclined to remand the matter to the AO to consider afresh, however, the said exercise may not be feasible considering that FY 2024-25 would expire in the next five days.

17. In view of the above, we consider it apposite to allow the present petition and direct the issuance of the certificate for nil withholding tax under Section 197 of the Act. We, however, clarify that issuance of the certificate shall not preclude the AO from examining whether the income/receipts of the petitioner are chargeable to tax in India in assessment proceedings, uninfluenced by this order.

18. The petition is allowed of in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 25, 2025

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