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

% Judgment Reserved on*: 23.12.2025*
Judgment delivered on*: 14.01.2026*
Judgment uploaded on*: As per Digital Signature~*

\+ **W.P.(C) 13473/2025**

NORD ANGLIA EDUCATION LIMITED .....Petitioner
versus
DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE INT. TAX 2(2) (2), NEW DELHI .....Respondent

Advocates who appeared in this case

For the Petitioner : Dr. Shashwat Bajpai, Advocate

For the Respondent : Mr. Shlok Chandra, SSC, Ms. Naincy Jain, JSC, Ms. Madhavi Shukla, JSC and Mr. Udit Dad, Advocate.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. This petition has been filed challenging an order dated 09.06.2025 and certificate dated 30.07.2025 issued by the respondent/Revenue, whereby the application of the petitioner/assessee under Section 197 read with Section 195(3) of the Income-tax Act, 1961 (*the Act*, hereinafter) seeking issuance of a 'Nil Withholding Certificate' has been rejected.

2. The petitioner is a company incorporated under the laws of the United Kingdom, and is engaged in the business of providing international

education across the globe. The petitioner has a subsidiary in India, Nord Anglia Education India Pvt. Ltd. (*Nord India*, hereinafter), to which the petitioner extends routine management and administrative support services, including marketing and communication, human resources, finance, IT, and corporate development, which are subsequently recovered on a strict cost-to-cost basis without any markup.

3. According to Dr. Shashwat Bajpai, learned counsel for the petitioner, the services rendered by the petitioner are purely managerial in nature and do not partake the character of Fees for Technical Services (FTS) under Section 9(1)(vii) of the Act. More importantly, under Article 13 of the India–UK DTAA, only technical or consultancy services that *make available* technical knowledge, skill, or know-how are taxable. Managerial services are outside its scope. The services of the petitioner do not *make available* any such technical knowledge to its Indian affiliates, and as such, the consideration received by it is not taxable in India.

4. According to him, the Income Tax Appellate Tribunal (*the Tribunal*, hereinafter) in the case of the petitioner itself for the Assessment Years (AY) 2020-21 and 2021-22, categorically held that the consideration received for services in the nature of marketing and communications, human resources, commercial, corporate affairs, legal, finance, information technology, and facilities management/corporate development, rendered to Nord India, would not be taxable as FTS in terms of the provisions of the India–UK Double Taxation Avoidance Agreement (DTAA). Despite the findings in these orders and detailed submissions made by the petitioner in response to the queries raised by the assessing officer, the respondent has mechanically passed the impugned order, stating that the issuance of a 'Nil

rate certificate' would be premature, and that tax @15% must be withheld "*to protect the interest of revenue*."

5. He stated that this action violates the statutory mandate of Rule 28AA of the Income-tax Rules, 1962 (*the Rules*) as well as the law laid down by this Court while disposing of similar petitions. Rule 28AA of the Rules is reproduced as under:

> *"28AA.*
> *Certificate for deduction at lower rates or no deduction of tax from income other than dividends.*
> *28AA (1) Where the Assessing Officer, on an application made by a person under subrule (1) of rule 28 is satisfied that existing and estimated tax liability of a person justifies the deduction of tax at lower rate or no deduction of tax, as the case may be, the Assessing Officer shall issue a certificate in accordance with the provisions of subsection (1) of section 197 for deduction of tax at such lower rate or no deduction of tax.*
> *(2) The existing and estimated liability referred to in sub-rule (1) shall be determined by the Assessing Officer after taking into consideration the following:—*
> *(i) tax payable on estimated income of the previous year relevant to the assessment year;*
> *(ii) tax payable on the assessed or returned 2[or estimated income, as the case may be, of last four] previous years;*
> *(iii)existing liability under the Income-tax Act, 1961 and Wealth-tax Act, 1957;*
> *(iv) advance tax payment [tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application under sub-rule (1) of rule 28];*

6. He submitted that the whole purpose of the specific conditions put under Clause 2 of Rule 28AA gets defeated if the assessing officer does not consider the position of the earlier years. Unlike in regular assessments, in

an application under Section 197, the assessing officer is mandated to consider earlier four assessment years. The assessing officer in the present case has failed to consider the position of the earlier assessment years, especially the years where the Tribunal has rendered findings favourable to the petitioner on the exact same issue. Reliance in this regard is placed by Dr. Bajpai on the judgments of this Court in the cases of ***Manpower Services India Pvt. Ltd. v. CIT, (2021) 430 ITR 399 (Delhi), Virgin Atlantic Airways Ltd. v. PCIT, W.P.(C) 5978/2021 dated 29.07.2021***, and ***Hero Wind Energy Private Limited v. CIT (TDS) Delhi, W.P.(C) 6184/2021***.

7. Further, the petitioner in its application has made detailed submissions regarding the nature of services rendered by them and categorical explanation as to why their case particularly does not fall within the ambit of FTS. However, neither has any finding been recorded, nor any reasons been provided in the impugned order with regard to the said submissions. Even the judgments relied upon by the petitioner, and also the orders of the Tribunal in the case of the assessee for AYs 2020-21 and 2021-22 have also not been dealt with in the impugned order while rejecting the application.

8. He has vehemently objected to the stand of the Revenue that it is in the process of filing an appeal against the order of the Tribunal as it has not accepted the decision as final. He has referred to the decision of the Supreme Court in ***Union of India v. Kamlakshi Finance Corporation Ltd. 1992 Supp (1) SCC 443***, which was followed by the Supreme Court in ***Mohan Lal Santwani v. Union of India, (2022) 449 ITR 476 (SC)*** and also by us in a recent decision titled ***Zscaler Inc. v. DCIT, 2025:DHC:11752-DB***, to contend that the mere filing of an appeal against an order does not

result in the assailed order becoming inoperative, and the authorities are still mandated to comply with the same.

9. Further, Dr. Bajpai has endeavored to establish that even on facts, it is clear that there is no issue of FTS in the present case. It is settled position that managerial support services do not constitute FTS as no technical know-how is "*made available*" and hence, the petitioner is not taxable under the India-UK DTAA. As per Article 13(4) of the India-UK DTAA, the term "*fees for technical services*" means consideration for rendering any technical or consultancy services which make available technical knowledge, experience, skill, know-how, including transfer of technical plan or design. Therefore, the support services rendered by the petitioner to its Indian group entity, which pertained to day-to-day business operations, including marketing and communications, human resources, legal, finance, and related functions, with the objective of enhancing operational efficiency, are not technical in nature and do not "*make available*" any technical knowledge, skill, or know-how to the recipients. Consequently, the consideration received by the petitioner for such services cannot be classified as FTS. He has distinguished the definition of FTS in the DTAA as against the definition of the same in the domestic act, which provides that FTS "*means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services*", to contend that managerial services has been categorically excluded from the scope of FTS under the DTAA, and as such no question of their taxability arises. To buttress his argument, he has relied on the judgments in the cases of ***Steria (India) Ltd. v. Commissioner of Income Tax, [2016] 72 taxmann.com 1 (Delhi), Commissioner of Income Tax v. Kotak Securities, [2016] 67***

taxmann.com 356 (SC), Commissioner of Income Tax v. De Beers India Minerals Pvt. Ltd., [2012] 346 ITR 467 (Kar), Director of Income Tax v. Guy Carpenter & Co. Ltd., [2012] 20 taxmann.com 807 (Delhi) and Commissioner of Income Tax v. Bio Rad Laboratories [Singapore], (2023) 459 ITR 5. It is submitted that these judgments have been relied upon by the Tribunal while passing the orders for the AYs 2020-21 and 2021-22.

10. He added that as the primary activity of managerial support services falls outside the scope of FTS, any ancillary activities linked thereto, such as the reimbursements received by the petitioner for expenses incurred on behalf of its Indian group entities also fall outside the purview of FTS and are, therefore, not taxable under the India–UK DTAA.

11. He has also controverted the reliance placed by the learned counsel for the Revenue on the judgment in ***National Petroleum Construction Co. v. Deputy Commissioner of Income Tax, Circle-2(2)(2), International Taxation, New Delhi [2019] 112 taxmann.com 364 (Delhi)*** by stating that the same was rendered in the context of a permanent establishment determination. Even the factual matrix is fundamentally different, as in that case, the Court was confronted with four questions- (i) PE attribution, (ii) characterisation of income, (iii) inconsistent stand by the assessee, and (iv) re-appreciation of treaty provisions. None of these questions arise in the present case, as the issue here is limited to the mechanical rejection of an application under Section 197 of the Act.

12. He has referred to a host of judgments delivered by this Court, where the Court has quashed certificates and orders passed by the assessing officer under Section 197 of the Act, and directed issuance of Nil or lower withholding certificates. His case is that the petitioner stands on a stronger

footing than the assessee in ***Zscaler Inc. (supra)***, as in the instant matter all relevant information, including documents were all placed on record before the assessing officer passing the order. It is submitted that remanding the matter back to the assessing officer would amount to granting him a second opportunity, despite having derelicted in its own duty under the provisions of the law.

13. He has prayed for quashing of the impugned certificate and order and issuance of a *nil withholding certificate*.

14. *Per contra*, Mr. Shlok Chandra, learned Senior Standing Counsel for the respondent/Revenue stated that the petition misconceives both the scope and purpose of the proceedings under Section 197 of the Act, which are inherently tentative, provisional, and intended only to enable a *prima facie* safeguard of revenue pending regular assessment. Further, he submitted that the Revenue has not accepted the orders of the Tribunal for AYs 2020-21 and 2021-22 and has already filed an appeal against the former before this Court, and a Miscellaneous Application has been filed before the Tribunal against the latter. Once the correctness of the Tribunal's findings is under challenge in appellate and rectificatory proceedings, the issue of law cannot be said to have attained finality.

15. That apart, he stated that even assuming that favourable findings exist for earlier years, it is a well-settled proposition of tax jurisprudence that the principle of *res judicata* does not apply to income-tax proceedings, especially where different assessment years are involved. Accordingly, even if the Tribunal has taken a particular view for earlier assessment years, the assessing officer is neither barred nor estopped from independently examining the issue for the relevant financial year, particularly at the stage

of Section 197 proceedings. Reliance in this regard is placed on the judgments in ***National Petroleum Construction Co. (supra)*** and ***New Jehangir Vakil Mills Co. Ltd. v. Commissioner of Income Tax, [1963] 49 ITR 137 (SC)***.

16. Mr. Chandra has further contended that the impugned order is a speaking order, as the assessing officer has expressly recorded that issuance of a Nil Withholding Certificate would be premature, as determination of taxable income for FY 2025–26 cannot be undertaken at that stage. The impugned order clearly records that, in order to protect the interest of revenue, tax is required to be deducted at a specified rate on a *prima facie* basis. This reasoning squarely aligns with the statutory scheme of Sections 195 and 197, which permit provisional safeguards pending regular assessment. He stated that a speaking order in the context of Section 197 of the Act cannot be equated with a reasoned assessment order under Section 143(3) of the Act. The statute requires the assessing officer to apply his mind to the material available and arrive at a tentative satisfaction. The impugned order meets this requirement by recording the stage of proceedings, the impossibility of final determination, and the necessity of revenue protection.

17. He has also contested the reliance placed by Dr. Bajpai on the judgment in ***Manpower Services India (supra)*** by stating that in that case, the controversy arose because the assessing officer had taken inconsistent stands across different assessment years, whereas in the present case, the stand taken is that the issue of taxability is contentious, pending adjudication, and incapable of final determination at the Section 197 stage. There is no material on record to show that the Revenue has accepted the

claim of the petitioner for the previous years without reservation. On the contrary, the Revenue has challenged the orders of the Tribunal, demonstrating a consistent and *bona fide* dispute on the legal characterisation of the payments received by the petitioner.

18. That apart, he submitted that in the present case the nature of the receipts arising from licensing of proprietary academic platforms, global systems and brand exploitation coupled with revenue linked consideration gives rise to a bona fide and live dispute as to whether the payments constitute Royalty or FTS or Included Services under the Act and the DTAA. In such circumstances issuance of a Nil Withholding Certificate would irreversibly prejudice the Revenue, whereas deduction at the applicable DTAA rate of 15% causes no comparable prejudice to the petitioner who retains the statutory right to seek refund upon final adjudication. The impugned order records the impossibility of undertaking a conclusive assessment at this stage of proceedings and the necessity of revenue protection, thereby satisfying the requirements of a speaking order within the limited scope of Section 197 of the Act.

19. He has sought dismissal of the petition.

20. Having heard the learned counsel for parties and perused the record, the short question that arises for consideration is whether the assessing officer is justified in rejecting the application of the petitioner/assessee for Nil Withholding Certificate *vide* order dated 09.06.2025 and certificate dated 30.07.2025.

21. The reasoning given by the assessing officer is primarily that as an assessment is not possible at the time of consideration of the application, tax

is to be deducted at 15% to safeguard the interests of the Revenue. Relevant part of the order of the assessing officer reads as under:-

> *"3. The applicant entered into an agreement with above mentioned Indian entities to provide services in the nature of educational quality improvement, financial consulting, improved personnel strategy, business advisory services, corporate affairs, marketing, consulting, computer and information technology advisory services. As per description of the services in the services agreement, it is seen that the services are of the nature of Fees for Included Services (FIS) as per India-UK DTAA.*
> *4. The business operations of the Assessee is primarily providing management and support services for learning technology and consultancy services to its group entities, which in turn manage the schools in their respective jurisdictions. The Assessee receives license fees for providing access to the online platform to the afore-mentioned three educational societies.*
> *5. Certificate u/s 197 of the Income-tax Act is a very premature stage for determining income for AY 2026-27 and assessment is not possible at this very point of time, hence, in order to protect the interest of revenue, certificate u/s 197 of the Income-tax Act may be issued to deduct tax at source @ 15% (excluding surcharge and cess) on the payment of Rs.22,22,77,000/- for reporting purpose only."*

22. The reasoning is that issuance of certificate under Section 197 of the Act is at a premature stage for determination of the income for AY 2026-27 and as an assessment is not possible at that point of time, in order to protect the interests of the Revenue, certificate under Section 197 of the Act may be issued to deduct the tax at source @15% on the payment of Rs.22,22,77,000/- for reporting purposes only.

23. The submission of Dr. Bajpai primarily is that the services rendered by the petitioner are purely managerial in nature and do not partake the character of FTS under Section 9(1)(vii) of the Act and also under Article 13 of the DTAA, as per which, only technical or consultancy services that *make available* technical knowledge, skill, or know-how are taxable. In this case, the petitioner has a subsidiary in India namely Nord India, to which the petitioner extends routine management and administrative support services. It is also his submission that the Tribunal in the case of the petitioner itself for AYs 2020-21 and AY 2021-22 has categorically held that the consideration received for services rendered to Nord India would not be taxable as FTS as per the DTAA.

24. On the other hand, Mr. Chandra for the Revenue has justified the impugned order and the certificate rejecting the application for grant of the Nil Withholding Certificate.

25. Suffice it to state, while deciding an application under Section 197 of the Act, the assessing officer needs to satisfy the requirements imposed by Rule 28AA of the Rules, which we have reproduced in paragraph 5 above. The relevant considerations have been laid down therein, which includes, (i) tax payable on the estimated income of the previous year relevant to the AY; (ii) tax payable on the assessed or returned income or estimated income for the last four previous years; (iii) existing tax liability under the Act and the Wealth Tax Act, 1957; and (iv) advance tax payment (tax deducted at source and tax collected at source) for the AY relevant to the previous year till the date of making the application.

26. As is apparent, the impugned order does not state whether these factors were really considered by the assessing officer while reaching his

conclusion. There are already two determinations by the Tribunal of AY 2020-21 and AY 2021-22, which have been decided on 18.02.2024 and 25.10.2024. It is the case of the Revenue that they have filed an appeal with regard to AY 2020-21 before this Court and a Miscellaneous Application for AY 2021-22 before the Tribunal. However, this argument would not help the case of the Revenue, as the Supreme Court in the case of ***Kamlakshi Finance Corporation Ltd. (supra)*** has unequivocally stated as under:-

> *"7. ... The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under Section 35-E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.*"

27. Even this Court on an identical issue, in ***Zscaler Inc. (supra)*** has referred to the above decision of the Supreme Court, and held as under:-

> *"62. The submission of Mr. Agarwal that the Revenue is in the process of filing an appeal against the order of the ITAT, is of little help to the Revenue, as the law in*

this regard has been quite well settled by the Supreme Court in the case of Union of India v. Kamlakshi Finance Corporation Ltd, (1991) 55 ELT 433 SC, wherein it was held that the order of higher appellate authorities should be followed unreservedly and the mere fact that the decision is not acceptable to the Revenue cannot be a ground for not following the decision of the higher authority. Nothing has been placed before us to show that the order of the ITAT has been set aside."

28. If that be so, until the conclusion arrived at by the Tribunal for AYs 2020-21 and 2021-22, are set aside or reversed, they would be binding on the Revenue. The fact that an appeal has been preferred cannot be the stand of the respondent/Revenue to justify the impugned order. Even the issue of applicability of Rule 28AA of the Rules is well considered and settled. In this regard, we may refer to the judgment of this Court in ***Manpower Services India Pvt. Ltd. (supra)*** wherein it was held as under:

"24...
THE ASSESSING OFFICER CANNOT IGNORE THE MANDATE OF RULE 28AA AND PROCEED ON ANY OTHER BASIS AS THE GOVERNMENT IS BOUND TO FOLLOW THE RULES AND STANDARDS THEY THEMSELVES HAD SET ON PAIN OF THEIR ACTION BEING INVALIDATED. CONSEQUENTLY, THE IMPUGNED ORDER IS QUASHED ON THE GROUND THAT THE DECISION MAKING PROCESS IN THE RESENT CASE IS CONTRARY TO LAW.
25. However, this Court is in agreement with the submission of learned standing counsel for the respondent that it is the decision making process and not the decision that can be impugned in a writ petition. To appreciate the decision making process, it is necessary to outline the provision under which the TDS rates have to be determined under Section 197 of

the Act. Rule 28AA of the Income Tax Rules prescribes the procedure to be followed by the assessing officer in determining the 'existing and estimated liability'.

...

"26. Perusal of the aforesaid Rule shows that the considerations prescribed under clause (2) are mandatory and the department is bound to determine the yearly TDS rates on the four parameters prescribed therein.

27. It is settled law that the Government is bound to follow the rules and standards they themselves had set on pain of their action being invalidated [See: Amarjit Singh Ahluwalia Vs. State of Punjab & Ors.; 1975 (3) SCR 82 and Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.; (1979) 3 SCC 489]. Consequently, the assessing officer cannot ignore the mandate of Rule 28AA and proceed on any other basis.

28. However, in the present case, the assessing officer has not followed the aforesaid rule as there is no reference in the impugned reason to any computation carried out under Rule 28AA."

29. The above position was reiterated by this Court in ***Virgin Atlantic Airways Ltd. (supra),*** observing as under:

"11. We have considered the submissions made by the learned counsel for the parties. The impugned "speaking order" has been reproduced hereinabove. Apart from stating that the petitioner may have other sources of income, the impugned order does not reflect compliance with rule 28AA of the Income-tax Rules, 1962. None of the considerations mentioned in rule 28AA appear to have been considered by the respondent in passing the impugned "speaking order".

12. This court in Manpowergroup Services India Pvt. Ltd. (supra) (authored by one of us (Justice Manmohan)), has held that the Assessing Officer cannot ignore the mandate of rule 28AA of the Rules and proceed on any other basis, as the Government is

> *bound to follow the rules and standards they themselves have set on the pain of their action being invalidated. In the absence of following the said mandate, the impugned order passed is liable to be quashed. The relevant extract from the above-mentioned judgment is reproduced hereinbelow (page 412 of 430 ITR) :*
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> *…*
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> *14. We may also take note of the judgment of this court in Lufthansa Cargo AG (supra) wherein under similar circumstances, this court had held that where an order discloses non-application of mind to germane and relevant considerations including the previous assessment orders and the certificates issued under section 197 of the Act, the order passed shall be arbitrary and liable to be set aside."*

30. Though, the AO has held that determining the income for AY 2026-27 is premature, the tax payable on the assessed or returned or estimated income for the previous years; existing tax liability under the Act and the Wealth Tax Act, 1957; and any advance tax payment, i.e., tax deducted at source and tax collected at source for the AY relevant to the previous year should have been considered for determining the application. It is clear that these factors have not been actually considered, which displays the non-application of mind of the assessing officer, making the impugned order and certificate untenable.

31. Reliance has been placed by Mr. Chandra on the decision of the Supreme Court in ***National Petroleum Construction Co. (supra)*** to contend that the scope of judicial review is very limited and it is the process undertaken by the assessing officer that needs to be looked into and not the ultimate conclusion. The applicability of the judgment is contested by Dr. Bajpai by stating that in the said judgment, the issues which fell for

consideration were relatable to- PE attribution; characterisation of income; inconsistent stand by the assessee and re-appreciation of treaty provisions, none of which arise for consideration in this case. We find the submission of Mr. Bajpai appealing.

32. In any case, the assessing officer not having considered the issue from the perspective of Rule 28AA of the Rules, it must be held that the statutory requirement on which the application of this nature needs to be decided has not been satisfied. As such, we are of the view that the impugned order and certificate passed by the assessing officer is untenable and is liable to be quashed. We order accordingly.

33. However, we find it apposite to remand the matter back to the assessing officer, who shall consider the application filed by the petitioner/assessee afresh, keeping in view the mandate of the law, specifically Rule 28AA of the Rules, and without being influenced by the filing of the appeal/application against the orders of the Tribunal for AYs 2020-21 and 2021-22, unless the same are set aside or varied either by this Court or by the Tribunal.

34. The AO shall conclude above said exercise within a period of four weeks from the receipt of copy of this order.

35. The petition is disposed of in the above terms.

V. KAMESWAR RAO, J

VINOD KUMAR, J

JANUARY 14, 2026
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