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

% Judgment Reserved on*: 02.12.2025*
Judgment delivered on*: 16.03.2026*
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\+ **W.P.(C) 11956/2025 & CM APPL. 65195/2025**

MAKE MYTRIP (INDIA) PRIVATE LIMITED .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX,
CIRCLE-75(1), DELHI & ANR. .....Respondents

Advocates who appeared in this case

For the petitioner : Mr. Salil Kapoor, Ms. Soumya Singh, Mr. Sumit Lalchandani and Ms Ananya Kapoor, Advocates

For the Respondents : Mr. Siddhartha Sinha, SSC.

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

JUDGMENT

V. KAMESWAR RAO, J.

1. The present petition has been filed challenging the order dated 17.07.2025 passed by the respondent no. 2 i.e., Deputy Commissioner of Income Tax (TDS), Gurugram for Financial Year ("F.Y.") 2025-26, relevant to Assessment Year ("A.Y.") 2026-27, whereby the respondent no.2 has rejected an application under Section 197 of the Income Tax Act, 1961 ("the

Act") dated 19.05.2025 seeking a *'NIL Withholding Certificate'* under Section 197 of the Act or without prejudice, a certificate at the rate of 0.30%, consistent with the certificates which were issued by the respondent no.2 for three preceding FYs.

BRIEF FACTS OF THE CASE

2. The petitioner is a company incorporated in India on April 13, 2000, under the Companies Act, 1956, and is engaged in the business of selling travel products and solutions. The petitioner owns a web-based travel services portal that can be accessed freely through the internet (through URL - www.makemytrip.com) and primarily focuses on promoting air tickets, hotel bookings and tours & packages about tourist destinations. The petitioner is regularly assessed to tax by the Deputy Commissioner of Income Tax, Circle 16(1), Delhi, for more than a decade in respect of its Permanent Account Number (PAN) – AADCM5146R, and by the Assistant Commissioner of Income Tax, Circle-75(1), Delhi-respondent no. 1 in relation to its Tax Deduction and Collection Account Number (TAN) – DELM09144C.

3. The petitioner has been filing applications for *NIL Withholding Tax Certificate* and the respondent no. 1 has been issuing such certificates for years, directing TDS to be deducted at a lower rate, as under :-

Date of Certificate	A.Y.	Rate of Withholding tax
01.06.2024	2025-26	0.30%
09.06.2023	2024-25	0.30%
05.08.2022	2023-24	0.30%
05.05.2021	2022-23	0.10%

29.06.2020	2021-22	1.50%
29.05.2019	2020-21	1%, 1.50%, 4%
20.07.2018	2019-20	1%, 1.50%, 3%
15.05.2017	2018-19	0.75%, 1.5%

4. On 19.05.2025, the petitioner filed the application before the respondent no.1 for *'NIL Withholding Tax Certificate'* for F.Y. 2025-26 relevant to A.Y. 2026-27 or without prejudice, lower withholding certificate @ 0.30%, in view of the certificate dated 01.06.2024. The case of the petitioner was, during the year under consideration, the petitioner has substantial tax losses, which were brought forward from past AYs available for set-off, and therefore, the taxable business income of the petitioner for the FY 2025-26 shall be *'Nil'* (after set-off of brought forward losses, including unabsorbed depreciation).

5. Pursuant to the filing of the application, the respondents sought clarifications from the petitioner. Amongst those clarifications, the respondents sought a specific clarification regarding outstanding tax demand of ₹1,50,65,760/- reflecting against the PAN and ₹11,660/- against the TAN of the petitioner, which was raised on the portal. The petitioner filed a reply.

6. In response to the amount reflecting against the PAN, the petitioner submitted that, it is not recoverable on account of pending rectification and an appeal is pending before the Appellate Authorities. Regarding the demand against the TAN of the petitioner, the petitioner submitted that the same was on account of a technical error, which is being corrected through revision of TDS and that the demand will not survive post the revision of TDS return. In the said response, the petitioner also filed copies of certificates issued for A.Ys. 2025-26, 2024-25, 2023-24, 2022-23 and 2021-

22, which were granted at lower withholding rates of 0.30%, 0.10% and 1.50%.

7. On 17.07.2025, the respondent no. 2 passed the impugned order rejecting the application of the petitioner by holding that, "*there are demand of ₹ 23,80,63,189/-, pending against the TAN and no stay has been granted against the demand*".

8. Aggrieved by the impugned order dated 17.07.2025, the petitioner has filed this petition.

THE CASE OF THE PETITIONER

9. The case of the petitioner is that the respondent no. 2 has erred in rejecting the application, even though in identical circumstances of continuous business losses, the respondent no. 1 had issued certificates for three preceding F.Y.s at the rate of 0.30%. In the absence of any change in the facts and circumstances of the case, the respondents could not have taken a contrary view from that of the three immediately preceding FYs. It is also the case of the petitioner that, in view of the substantial tax losses brought forward from the past AYs available for set-off, the total taxable business income for the year under consideration, i.e., FY 2025-26 shall be 'NIL', which was identical to the financial position of the petitioner in the earlier FYs.

10. It is the case of the petitioner that in the demand appearing on the TAN of the petitioner, a substantial portion aggregating to ₹23,50,21,249/- pertains to previous 4 AYs and these demands pertain to similar issues and were raised on account of alleged short deduction of tax at source on

payments made to; (a) Google India for online advertisement; (b) Khajrana and other parties for Common Area Maintenance Charges; and (c) HP India for Annual Maintenance Charges (only for AYs 2018-19 and 2019-20). Against these demands, the petitioner has filed rectification applications followed by an appeal before the National Faceless Appeal Centre.

11. Mr. Salil Kapoor, the learned counsel appearing for the petitioner, submitted that the Revenue having granted certificates for three preceding FYs at the lower rate of 0.30% in similar situations, ought not to have resiled from that position without giving any justification for the same. He also submitted that the rule of consistency in income tax proceedings cannot be ignored, and that, if a view has been taken in the proceedings for earlier years, then the Revenue cannot take a different view in the subsequent year unless there is some rational and reasonable cause for doing so.

12. In support of his submissions, he has placed reliance on the following judgments;-

i) ***Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC);***

ii) ***Commissioner of Income Tax v. M/s Excel Industries 2014 13 SCC 459;***

iii) ***Lufthansa Cargo AG v. DCIT: W.P.(C) 91361/2019;***

iv) ***Commissioner of Income Tax v. ARJ Security Printers, 264 ITR 276;***

v) ***Commissioner of Income Tax v. Neo Poly Pack P. Ltd., 245 ITR 492***

vi) ***Commissioner of Income Tax v. Dalmia Promoters Developers Pvt. Ltd., 2006 SCC OnLine Del 83.***

13. He submitted that the respondent no.2 issued a query on 28.05.2025 with respect to the TAN demand amounting to ₹11,660/- pertaining to the first quarter of TDS return for FY 2024-25 and it was duly clarified by the petitioner in its submission dated 03.06.2025; that, it is on account of a technical error encountered during the filing of TDS return, which would be rectified post revision of TDS return. Apart from the said TAN demand, the respondent no.2 had not sought clarification regarding any other pending TAN demand of the petitioner. However, in the impugned order, the respondent no.2 has resorted to pendency of the demand of ₹23,80,63,189/- against the petitioner's TAN, for rejecting its application.

14. Mr. Kapoor submitted that the demand amounting to ₹ 23,80,63,189/- against the petitioner's TAN could not have been the reason for rejecting the application without seeking clarification from the petitioner and even otherwise, the said demands are not recoverable. The demand raised pursuant to orders passed under Section 201 of the Act by the TDS Officer, is in appeal. During the pendency of the appeal, the petitioner filed rectification applications under Section 154 of the Act as well as applications seeking stay of recovery of demand, which are pending consideration.

15. He submitted that the said demands are not sustainable, as the basis adopted by respondent no.1 during the verification proceedings under Section 201 of the Act is fundamentally flawed. The respondent no. 1 has raised these demands by placing reliance on the decision in ***Google India (P) Ltd. v. Joint Director of Income-tax (International Taxation), (2018) 194 TTJ 385*** by the Bangalore Bench of the Tribunal. However, the said

decision has been overturned by the Karnataka High Court in the case of ***Google India (P.) Ltd. v. Commissioner of Income-tax, International Taxation, Bengaluru, (2021) 435 ITR 284 (Karnataka).*** In support of his submission, Mr. Kapoor has relied upon the following judgments:-

i) ***Sultan Leather Finishers (P.) Ltd. v. Assistant Commissioner of Income-Tax, [1991] 191 ITR 179 (All.);***

ii) ***Mathew Scaria v. Deputy Commissioner of State Tax & Ors, [WP(C) no. 33099 Of 2023] (Kerala High Court);***

iii) ***Purnima Das v. Union of India, [2010] 329 ITR 278 (Calcutta);***

iv) ***M/S Ruchi Infrastructure Ltd. v. State of Gujarat, [R/Special Civil Application no. 398/2021] (Gujarat High Court);***

v) ***UTI Mutual Fund v. Income-tax Officer, 19(3)(2) [2012]345 ITR 71 (Bombay).***

16. He stated that the impugned order rejecting the application is without considering the fact that the petitioner is entitled to tax refunds of around Rs.84 crores for various AYs from the Revenue. The petitioner has been undertaking business for more than a decade with operational revenues of Rs.5,23,104 lakhs, Rs.3,96,253 lakhs and Rs.1,80,487 lakhs in FYs 2023-24, 2022-23 and 2021-22, respectively, and has been duly deducting and depositing TDS with the respondents on payments made to various vendors.

17. He submitted that, the rejection of the application is not in terms of the parameters laid down under Rule 28AA of the Income Tax Rules, 1962 ('Rules'). The respondent no.2 has failed to appreciate that the outstanding tax liability for earlier years, are not recoverable. He also submitted that the

respondent no. 2 has also failed to appreciate that all the four parameters mentioned in Rule 28AA(2) are fulfilled in the case of the petitioner.

18. Mr. Kapoor submitted that the action of the respondents strikes at the core constitutional principles of certainty, consistency and non-arbitrariness in tax administration. In this regard, he has relied upon the judgment of the Supreme Court in ***Principal Commissioner of Income Tax v. Maruti Suzuki lndia Ltd., [2019] 416 ITR 613 (SC)*** wherein it was held that, *"Business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable"*. He has also placed reliance on the decision of the Supreme Court in ***South Indian Bank Ltd. v. CIT, [2021] 130 taxmann.com 178 (SC)***.

19. He submitted that, for last eight years, the petitioner has been granted certificates under Section 197 of the Act on an unchanged factual profile, continuous losses, and identical business circumstances. He also submitted that there has been no alteration in the petitioner's financial position, tax parameters, or in the statutory framework governing issuance of lower deduction certificates. He also submitted that the respondent no. 2 has withholding rejected the petitioner's application through a one-line order (the impugned order) without any reasoning, application of mind or justification for departing from the long-standing consistent view adopted by the respondents. He also submitted that, any deviation from a settled and consistently applied position, without any change in facts, law, or revenue exposure, directly contravenes the mandate of the Supreme Court in ***Maruti Suzuki (supra)*** and ***South Indian Bank (supra)***.

20. Mr. Kapoor submitted that outstanding demand is not a valid ground for rejecting an application under Section 197 of the Act. He submitted that the Bombay High Court in ***Tata Teleservices (Maharashtra) Ltd. v. DCIT (TDS), [2018] 402 ITR 384 (Bom),*** has held that:

> *"Neither Section I97 of the Act nor Rule 28AA provides that no certificate of nil/lower rate of withholding tax can be granted if any demand, howsoever minuscule, is outstanding. .. The authority is required to determine the existing/estimated liability by considering all aspects, including the estimated tax payable for the relevant year and the existing liability. This necessarily includes taking into account demands likely to be upheld in appellate proceedings."*

21. In support of this proposition of law, he has also relied upon the following judgments:-

i) ***Infrastructure Development Authority v. The Assistant Commissioner Of Income Tax, (Civil Writ Jurisdiction Case no. 9716/2024) [Patna High Court]***

ii) ***Jones Lng Lasalle Property Consultants (India) (P.) Ltd. v. Deputy Commissioner of lncome-tax, [2022] 447 ITR 40 (Delhi).***

22. According to him, the respondents were required to examine the petitioner's real tax posture, including; (i) continuous losses, (ii) NIL taxable income, (iii) substantial pending refunds, and (iv) the fact that the alleged outstanding demands, which are wholly disputed, partly rectified, and *sub-judice* before Appellate Authorities.

23. He submitted that the respondents instead of carrying out this statutory evaluation mandated under Rule 28AA of the Rules, had rejected the application solely on the basis of demands raised, which are not

recoverable in light of the petitioner's large refund position. He also submitted that the respondents failed to appreciate that, in view of the fact that the petitioner's taxable business income for the year under consideration would be NIL, and in the absence of lower withholding certificate, the petitioner's substantial working capital would be blocked.

24. It is the submission of Mr. Kapoor that the substantial reduction in outstanding demand, as acknowledged by the Revenue, renders the basis of rejection unsustainable, as subsequent to the filing of this writ petition, the TDS Officer has passed orders under Section 154 read with Section 201 (1) / I(A) for FYs 2017-18 and 2018-19, wherein, it has substantially reduced the very demands that formed the sole basis of rejection.

25. He submitted that the demand in the impugned order, which is the ground for denial of the certificate, now stands reduced to ₹ 14.08 crore, as evidenced by the rectification orders and the factual matrix asserted in the application now stands unequivocally accepted by the respondents in their counter-affidavit. Each of these demands is presently *sub judice* in appeal, pending rectification, or covered by stay applications, many of which continue to remain unattended due to inaction on part of the Jurisdictional Assessing Officer.

26. He submitted that the respondents have not disputed that the ‘outstanding demands’ in the impugned order are neither final nor crystallised. In such circumstances, there exists no confirmed or enforceable liability that could constitute a legitimate basis to deny the petitioner’s equitable relief under Section 197 of the Act. On the contrary, the petitioner has already filed detailed rectification and stay applications in respect of the

purported demands. He also submitted that the petitioner has undertaken a comprehensive reconciliation of its outstanding demand and refund is due as on 07.10.2025. This reconciliation demonstrates that, after giving effect to the above rectification orders, the total outstanding demand now appearing in the system of the Revenue aggregates to ₹14,08,03,300/-, most of which has been incorrectly appearing against the petitioner and relates to AYs, which are pending rectification, appeal, or in stay proceedings.

27. He submitted that, without prejudice, the petitioner has voluntarily offered that, if so directed, the Revenue may adjust 20% of the reduced disputed demand against the pending refunds of ₹ 84.10 crores, which are due to the petitioner and continued to remain pending for release. These refunds arise pursuant to various assessment and rectification proceedings under Sections 143(1), 143(3) and 154 of the Act and the Revenue is in a net payable position to the petitioner/ applicant. In the alternative, the petitioner has undertaken to deposit the said amount within seven days, entirely in line with the CBDT's Instruction in Circular no. F. no. 404/72/93- ITCC dated 29.02.2016. This assurance has been tendered to demonstrate the petitioner's *bona fides* and to facilitate an expeditious issuance of a certificate at NIL or at the rate of 0.30%, within a period of two weeks.

28. One of submissions of Mr. Kapoor is that petitioner’s prior applications were allowed by the Revenue on similar demand/scenarios. In this regard, he has reproduced a chart, as under:-

Demand at the time of filing for lower withholding certificate

Financial Year (FY)	**Demand (in ₹)**
Revision FY 2024-25	32,643,131
FY 2024-25	46,546,401
FY 2023-24	35,407,451
FY 2022-23	34,958,881

The initial demand as alleged by the Revenue in the impugned order has been reduced and the correct aggregate demand can only be ₹12,81,16,273/- and not the amount as alleged in the impugned order or rectification order dated 22.08.2025.

29. He has relied upon the judgment of this Court in ***Manpower Group Services India (P.) Ltd. v. CIT (TDS)-1, New Delhi, [2021] 123 taxmann.com 290 (Delhi) (W.P.(C) 5865/2020), decided on 21.12.2020***, to contend that this Court has categorically held that, an order under Section 197 of the Act, must be reasoned and cannot arbitrarily fix rates without justification. Any such order violates the principles of natural justice and is liable to be quashed.

30. He submitted that, in this case, the respondents have completely ignored Rule 28AA of the Rules, which prescribes the formula for determining the appropriate rate of TDS based on estimated tax liability and existing demand. The impugned order does not even refer to Rule 28AA, let alone apply its formula, rendering the decision arbitrary and contrary to statutory mandate. He also submitted that the present petition should also

take into account the pending refunds and brought-forward losses, as these factors directly impact the estimated tax liability and revenue risk.

31. On the issue of territorial jurisdiction, he submitted that the petitioner is assessed to tax in Delhi, before respondent no. 1 i.e. the Assistant Commissioner of Income Tax, Circle 75(1), Delhi. The respondent no. 1 has been consistently exercising jurisdiction over the petitioner for several years and even after filing of the present petition, respondent no. 1 is exercising the authority for all relevant purposes, including issuance of lower deduction certificates and the rectification orders, for the preceding AYs.

32. He submitted that, for several years, the petitioner has filed multiple tax and non-tax writ petitions before this Court, all of which have been entertained and adjudicated without jurisdictional objection, including ***M/s Make My Trip India Pvt. Ltd. v. Deputy Commissioner of Income-tax, Circle 16-1 & Anr., W.P.(C) 5168/2021***. In addition, income tax appeals filed by the Revenue itself in respect of the petitioner have been adjudicated by this Court in ***Pr. CIT-6 v. Make My Trip India Pvt. Ltd. (2019) (Del HC) - ITA 136/2019***. He submitted that the respondents cannot now selectively dispute the jurisdiction of this Court while having repeatedly invoked and accepted the same forum in earlier proceedings.

33. He submitted that the argument of the Revenue would lead to an untenable and jurisdictionally fragmented regime, where the assessee would have to seek remedies before two different High Courts for intertwined and overlapping tax issues which is contrary to the principles of judicial discipline and certainty. He also submitted, it would render the ongoing assessments and proceedings before respondent no. 1 vulnerable, and if this

Court is held not to have jurisdiction, the foundational authority of respondent no. 1, which is also located in Delhi comes into question. Therefore, the Revenue cannot simultaneously maintain that the respondent no. 1 has jurisdiction to issue notices and make assessments, but this Court lacks jurisdiction to examine the legality of the same.

34. He submitted that the respondents' reliance on the petitioner's Gurgaon address for filing Form 13 is a procedural requirement and cannot override the substantive fact that the adverse financial consequences occur within this Court's jurisdiction and does not amount to *"approbation and reprobation"* as alleged by the Revenue. The petitioner has at all times maintained, and the Revenue has at all times acted upon, the position that the assessment and TDS jurisdiction lies with respondent no. 1 in Delhi. As late as October and November 2025, the petitioner has received fresh notices under Section 201 of the Act for FYs 2019-20 and 2021-22 from respondent no. 1. The petitioner has made full and candid disclosure before this Court regarding the Gurgaon address mentioned in Form 13; hence, there is no suppression of any material fact.

35. Mr. Kapoor submitted that the Revenue's objection on the ground that the petitioner ought to have availed the remedy of revision under Section 264 of the Act is wholly untenable and contrary to the settled legal position of this Court in the case of ***ManpowerGroup Services India (P.) Ltd. (supra)*** which held that, a revision under Section 264 of the Act is not an efficacious remedy where the order under Section 197 of the Act is passed with prior approval of the Commissioner, as the revisional authority cannot

sit in judgment over its own administrative approval amounting to an appeal from "*Caesar to Caesar*."

36. In support of his submission that, even if the remedy under Section 264 of the Act is theoretically available, such remedy is neither efficacious nor adequate in law for assailing an order passed under Section 197 of the Act. He has relied upon the following judgments:-

i) ***SFDC Ireland Ltd. v. CIT, [2024] 465 /TR 471 (Del.);***

ii) ***Serco BPO (P.) Ltd. v. ACIT, [2012] 25 taxmann.com 4 (P&H)***

37. On the issue of the Revenue's reliance on the judgment of this Court in ***National Petroleum Construction Co. v. DCIT, (421 ITR 24),*** Mr. Kapoor submitted that the said judgment was in the context of 'Permanent Establishment' (PE) determination, where this Court found that the assessee had taken inconsistent positions in earlier proceedings and before arbitration tribunals, resulting in highly fact-specific observations that turned exclusively upon the assessee's contradictory stand. When carried in an appeal ***(Civil Appeal no. 4964 of 2022)***, the Supreme Court delivered two separate and conflicting opinions and the Supreme Court expressly directed that the matter to be placed before a larger Bench. Moreover, in that case, the High Court was confronted with questions relating to (i) PE attribution, (ii) characterization of income, (iii) inconsistent stand by the assessee, and (iv) re-appreciation of treaty provisions, all of which required a fact intensive evaluation wholly absent here.

38. He submitted that, the present matter is concerned with a mechanical one-line rejection of a Section 197 application, a jurisdiction that is entirely administrative, governed strictly by Rule 28AA, and a reasoned consideration of (a) brought-forward losses, (b) estimated tax liability, (c) past certificates, and (d) pending refunds. None of these statutory obligations were discharged by the Revenue in ***National Petroleum (supra)*** and it neither construed Section 197 or the Act nor decided whether a certificate can be denied on the basis of alleged outstanding demand. That issue stands governed by a completely different line of authorities including ***Tata Teleservices (supra), Serco BPO (supra), Jones Lang Lasalle (supra), Manpower Group (supra)*** and ***SFDC Ireland (supra),*** all of which directly support the case of the petitioner. In support of his submissions Mr Kapoor has relied upon the following decisions:-

i) ***Bently Nevada LLC v. ITO Ward 1(1)(2), International Taxation, [2019] 267 Taxman 333 (Delhi)***;

ii) ***R. Srinvasan v. ACIT/DCIT, Central Circle-I, [2014] 360 ITR 471 (Madras);***

39. He seeks prayers as made in the petition.

THE CASE OF THE RESPONDENTS

40. Mr. Siddhartha Sinha, learned Senior Standing Counsel for the Respondents/Revenue submitted that the survey operation under Section 133A(2A) of the Act was conducted on 17.12.2019 at the business premises of Make My Trip (India) Pvt. Ltd., Gurugram, to verify compliance with TDS provisions. Thereafter, a series of notices were issued under Section

201(1)/(1A) by the TDS Circle, Delhi, in respect of FYs 2017-18 and 2018-19. Accordingly, orders were passed raising demands qua the Assessee.

41. On 25.02.2025, orders were passed under Section 201(1)/(1A) for FYs 2017-18 and 2018-19, raising demands of ₹ 9.89 crore and ₹ 10.61 crore respectively.

42. On 23.05.2025, the petitioner filed online application in Form no. 13 under Section 197 of the Act seeking a certificate for Nil/Lower Deduction of Tax for FY 2025-26. Thereafter, the Revenue/ TDS Circle, Gurgaon, sought clarification from the petitioner including the status of the outstanding demand.

43. He submitted that the petitioner in its reply submitted that the demand of ₹ 71,58,029/- for AY 2018-19 and ₹3,71,098/- for AY 2019-20 were pending rectification by the AO. But in support of its claim, no documentary evidence was provided by the petitioner. The petitioner simply uploaded the response against the demand on e-filing portal wherein it had disagreed with outstanding demands.

44. He submitted that, as per Annexure 12 submitted by the petitioner, the demand of ₹ 71,58,029/-for AY 2018 -19 and ₹ 3,71,098/- for AY 2019-20 were correct and collectible in nature. Against the demand of ₹ 56,33,776/- for AY 2021-22, the petitioner submitted that the demand was raised against the penalty order under Section 271 G of the Act dated 23.04.2024 for AY 2021-22, which is pending before the CIT(A) for adjudication and no stay has been granted by the Appellate Authority. Therefore, as per Section 226 of the Act, the said demand is collective in nature. Apart from the said

demand, there is an outstanding demand of ₹5,91,27,449/- against the PAN, which is collectible in nature, on response submitted by the AO. As substantial outstanding demands exist against the petitioner's PAN and associated TANs, which have been duly verified by the Jurisdictional Assessing Officer, it is found to be correct and collectible.

45. He clarified that, on 22.08.2025, rectification orders were issued under Section 154 read with Section 201(1)/(1A) of the Act for FY 2017-18 and FY 2018-19, reducing the demand from ₹ 20.5 crore to ₹ 9.11 crore. He also submitted that the petitioner has not obtained a stay order from the Appellate Authority or from the AO under Section 220(6) for the demand raised under Section 271 G for AY 2021-22. Similarly, significant demand is outstanding and has been confirmed by the AO and the same is reflected as outstanding against TANs linked to the petitioner.

46. He submitted that, as per Rule 28AA of the Rules, the presence of substantial outstanding tax liabilities, including TDS defaults, materially impacts the consideration for issuance of certificate under Section 197 of the Act. These defaults indicate non-compliance with the provisions of Chapter XVII-8 of the Act and adversely affect the petitioner's tax compliance profile.

47. He contended that, considering the petitioner did not meet the pre-conditions of financial and tax compliance required for issuance of a certificate for lower or nil deduction of tax at source under Section 197 of the Act read with Rule 28AA, i.e. the existing liabilities referred to sub rule (2)(iii), the respondent no.2 has rightly passed the impugned order.

48. He submitted that, in Form no. 13, the petitioner has mentioned its address as Gurgaon, Haryana, its corporate address in the application which was consequently processed by the respondent no. 2, Deputy Commissioner of Income Tax, TDS Circle, Gurgaon, who passed the impugned order. Since the cause of action, i.e., the rejection of the application, has arisen in Gurgaon, the present petition falls within the territorial jurisdiction of the Punjab and Haryana High Court.

49. He submitted that, on a bare perusal of the prayers made by the petitioner in the present writ petition, it is apparent that the petitioner is seeking redressal solely against the action of the Deputy Commissioner of Income Tax (TDS), Gurgaon. Accordingly, the petitioner ought to have approached the Punjab and Haryana High Court. The petitioner made a passing reference of the Form no. 13 to justify the maintainability of the Writ Petition before this Court. He also submitted that the petitioner on his own volition and with a conscious choice had applied to the Gurgaon Commissionerate for grant of the TDS Certificate. There is no role of the Jurisdictional Assessing Officer as such and the petition ought to be dismissed at the threshold on grounds of maintainability for want of territorial jurisdiction.

50. Mr. Sinha places reliance on the decision of this Court in ***SIS Live v. ITO, (2011) 333 ITR 13,*** to contend that the submission of the petitioner that the jurisdiction rests with this Court by relying upon the judgment of ***Manpowergroup Services India Pvt. Ltd (supra)***, is erroneous as the said judgment is based on a different set of facts. Therein, this Court was dealing with the grant of certificate under Section 197 of the Act, at a rate higher

than the rate requested by the assessee. Since, the revenue foregone was more than the rate permissible by the Range Head, the approval was taken from the Commissioner as per the CBDT Instruction no. 08/2018. Further, this Court observed that the Commissioner of Income Tax can entertain a revision petition under Section 264 of the Act only when the order, which is the subject matter of revision, is passed by an authority subordinate to him. In the present case, there is an upfront rejection of the application. In such a scenario, it is apparent that there was no revenue foregone and as such no approval was required to be taken from the Commissioner for passing such order.

51. Mr. Sinha submitted that the petitioner has conveniently not attached the Form No.13 that had granted jurisdiction to the Deputy Commissioner of Income Tax, TDS Circle, Gurgaon. He also submitted that, it is a settled principle of law that, a writ petition under Article 226 of the Constitution is a discretionary remedy and a petitioner who suppresses material facts or makes misrepresentations forfeits the right to be heard, as held in the judgment of the Supreme Court in ***Ramjas Foundation v. Union of India,. (2010) 14 SCC 38*** and ***Dalip Singh v. State of U.P, (2010) 2 SCC 114.***

52. He submitted that, a perusal of the documents and the chain of events would indicate that the approval of the order rejecting the application was principally provided by the Range Head in terms of the CBDT Instruction no. 08/2018, and as such no approval was taken from the Commissioner for passing such order. The procedure has also been streamlined in the CBDT Notification no. 8 of 2018 dated 31.12.2018, wherein it is observed that:

"6.2.2 If required, the Range Head may seek clarification from the AO and after submission of clarification by the AO through the AO Portal, the Range Head shall take a final decision on the application. All these steps shall be carried out on AO Portal in electronic mode under respective logins of Range Head and AO.

6.2.3 After a decision on the application has been taken by the Range Head, if the revenue foregone is within the powers conferred upon the Range Head (as per CBDTs Instructions on the subject) to accord administrative approval, the application will be marked back electronically on AO Portal to the Assessing Officer for issuance/rejection of the certificate under section 197(1)/206C(9) of the Income-tax Act, 1961. The procedure for issuance of certificate is prescribed below in paragraph 7. However, if the revenue foregone is within the powers conferred upon the CIT (as per CBDTs Instructions on the subject) to accord administrative approval, the application shall be forwarded to the CIT for a decision in the matter."

53. In support of his submission, Mr. Sinha has relied upon the judgments in ***Coforge Solutions (P.) Ltd. v. Deputy Commissioner of Income-tax (TDS), [2024] 158 taxmann.com 160 (Punjab & Haryana)[20-07-2023], OPJ Trading (P.) Ltd. v. Income-tax Officer, TDS-2, [2018] 98 taxmann.com 117 (Gujarat) [11-09-2018]*** and ***CIT v. Chhabil Dass Agarwal, (2014) 1 SCC 603.***

54. He submitted that, it is a settled principle that Section 197 of the Act does not determine assessable income or final tax liability. Such a determination is statutorily reserved for regular assessment proceedings, followed by appellate remedies and drawn towards the provisions of Section 190 of the Act. It is a settled principle of law that, Section 197 of the Act certification is purely interim and provisional in nature, based on current demand and revenue sensitivity considerations, and does not create a vested

or enforceable right in favour of the Assessee, nor does past issuance of nil or lower deduction certificates bind the Revenue for subsequent years. The proceedings under Section 197 of the Act are interim and summary in nature; as such the petitioner's reliance on earlier years is misconceived, misleading and untenable.

55. Mr. Sinha submitted that, Section 197 of the Act read with Rule 28AA of the Rules, expressly requires that, while considering an application for a lower or nil deduction certificates, the AO must take into account the tax payable on the basis of completed assessments and the existing outstanding tax liability. Where there is recoverable demand without stay, the Revenue is precluded from issuing a nil/lower deduction certificate, as doing so would frustrate the recovery mechanism.

56. He submitted that the petitioner misconstrued the objective and purpose of the issuance of the certificate under Section 197 of the Act as the same is issued to enable the deductee/assessee to receive the amount from the deductor. In essence, the statutory rate of deduction of TDS is lowered by the AO by grant of certificate under Section 197 of the Act. He has relied on Section 190 of the Act and the CBDT Instruction no. 8/2006 dated 31.10.2006, as under:-

> *"1. I am directed to say that instances have been brought to the notice of the Board that Assessing Officers are issuing certificates for lower deduction or non-deduction of tax at source under section 197(1) of the Income tax Act indiscriminately and in contravention of the methodology and procedure laid down in rules 28AA and 28AB of the Income-tax Rules. Such arbitrary issuance of certificates under section 197(1) not only adversely affects the collection of tax at source but also seriously jeopardizes the chances of*

disclosure/detection at a later stage of such incomes on which no tax has been deducted or tax has been deducted at a very low rate.

2. Accordingly, all Assessing Officers are directed to ensure that all certificates under section 197(1) are issued by them strictly as per the manner prescribed under rule 28AA or rule 28AB, as the case may be. No certificate under section 197(1) shall be issued under circumstances, which are not covered by rule 28AA or rule 28AB, howsoever genuine and compelling such circumstances may be. Moreover, the Assessing Officer shall obtain prior administrative approval of the Range Jt. CIT/Addl. CIT before issuing a certificate under section 197(1). The Jt. CIT/Addl. CIT shall satisfy himself of the fact that the certificate is being issued strictly in accordance with rule 28AA/28AB before according his approval for issuance of the certificate. A record of such certificate issued should be maintained in the office of the Assessing Officer."

57. Another CBDT Instruction no. 7 of 2009 dated 22.12.2009 also echoed a similar view as under:

"I am directed to bring to your notice on the subject of issue of certificates under section 197. Instruction no. 8/2006, dated 13-10-2006, was issued stating that 197 certificates for lower deduction or nil deduction of TDS under section 197 are not to be issued indiscriminately and for issue of each certificate, approval of the JCI/Addl. CIT concerned need to be taken by the Assessing Officer (AO). Further, a letter of even number dated 6-10-2008 was issued stating that power of issue of certificates under section 197 would ordinarily be exercised by the officers manning TDS Administration. However, instances are being brought to the notice of Board that the Assessing Officers are issuing certificates for lower or non-deduction of tax at source under section 197 indiscriminately, in contravention of relevant Income-tax Rules and Instructions.

I am, therefore, directed to communicate to you that further to the contents of Instruction no. 8/2006, prior administrative approval of the Commissioner of Income-tax (TDS) shall be

taken (where the cumulative amount of tax foregone by non-deduction/lesser rate of deduction of tax arising out of certificate under section 197 during a financial year for a particular assessee exceeds ₹ 50 lakhs in Delhi, Mumbai, Chennai, Kolkata, Bangalore, Hyderabad, Ahmedabad and Pune stations and ₹ 10 lakhs for other stations. Once the CIT(TDS) gives administrative approval of the above, a copy of it has to be endorsed invariably to the jurisdictional CIT also."

58. He submitted that, Section 197 of the Act is not applicable to every case of payment, and the grant of certificates is restricted only to the provisions mentioned therein. The decision to include any provision within the purview of Section 197 of the Act is subject to policy considerations and amendments by the Government. The provisions of Section 197 of the Act have been introduced with an objective that the refund of a particular amount pursuant to the filing of the Return of Income carries an interest cost on the public exchequer. Therefore, an option has been given to the AO to grant certificates at a "Nil" rate or any other rate lower than the actual rate applicable for deduction of TDS. Therefore, it requires satisfaction of the AO in such cases. However, at the same time, such a view cannot be arbitrary and to ensure uniformity, the provisions of Rule 28AA of the Rules, come into the picture.

59. While relying upon the judgment in ***Manpowergroup Services India Pvt.(supra),*** Mr. Sinha submitted that, this Court was in agreement with the submission of the Revenue that it is the decision making process and not the decision that can be impugned in a writ petition. This Court held that the consideration prescribed under Clause 2 of Rule 28 of the Rules are mandatory and the Revenue is bound to determine the yearly TDS rates

based on the four parameters prescribed therein. He also submitted that the AO has considered the above aspect and rejected the application of the petitioner. It is undisputed that the demand exists on the portal which has neither been recovered nor been stayed by any Court or Tribunal.

60. He submitted that the scope of judicial review in the application under Section 197 or to grant a lower rate of withholding tax vis-à-vis the statutory rate of deduction, is extremely narrow, as such orders are interim in nature and only reflect a tentative/estimated opinion and if the Assessee is found to be eligible for refund, the same shall be granted to the Assessee with applicable statutory interest.

61. He submitted that doctrine of *res judicata* does not strictly apply to interim / provisional certificate issued under Section 197 of the Act, as held by the Bombay High Court in ***Messrs H.A. Shah & Co. v. Commr. of Income-Tax and Excess Profits Tax, Bombay City, (1956) 30 ITR 618***. He also stated that, a similar view was taken by the Constitution Bench of the Supreme Court in ***Instalment Supply (P) Ltd. v. Union of India, 1961 SCC OnLine SC 185***. Therefore, the general rule is that this doctrine is inapplicable for tax matters as the findings/opinions recorded by either an assessing or adjudicating authority have no binding effect on the same issue in subsequent years

62. In support of his submission on the non-applicability of doctrine of *res-judicate* and *estoppel*, he has relied upon ***Amalgamated Coalfields Ltd. v. Janapada Sabha, 1962 SCC OnLine SC 72*** and ***Distributors (Baroda) (P) Ltd. v. Union of India, (1986) 1 SCC 43.***

63. He seeks dismissal of the present petition with exemplary costs.

ANALYSIS AND CONCLUSION

64. Having heard the learned counsel for the parties and perused the record, at the outset, we intend to deal with the submission of Mr. Sinha on the issue of territorial jurisdiction of this Court to entertain the writ petition.

65. The submission of Mr. Sinha is that the impugned certificate has been issued from the office of DCIT (TDS), Gurugram, Haryana and as such, the petitioner needs to approach the Punjab and Haryana High Court for challenging the said certificate. His submission is also by drawing our attention to Form no. 13 wherein the petitioner has mentioned its address as Gurugram, Haryana.

66. This submission looks appealing on a first blush but on a deeper consideration it is noted that the impugned certificate, though issued from Gurugram, Haryana but is addressed to the office of the petitioner in Delhi i.e., Make My Trip (India) Pvt. Ltd. B-36, First Floor, Pusa Road, New Delhi-05. What is important is that the application filed by the petitioner was addressed to Asstt. Commission of Income Tax, Circle 75(1), Aayakar Bhawan, Laxmi Nagar, New Delhi.

67. That apart, we find that the certificate for the previous AY 2025-26 has been issued from office of TDS Circle 75(1), Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi. Similar is the position with respect to AYs 2024-25, 2023-24, 2022-23, 2021-22, 2020-21, 2019-20 and 2018-19, as reproduced herein under:-

S.No.	Year	PAN No.	Issuing Authority- Certificate issued under Section 197 of the Act.
1.	AY 2018-19	AADCM5146R	Certificate under Section 197(1) of the Income Tax Act, 1961 relating to deduction of tax at source TDS Circle 75(1), Delhi
2.	AY 2019-20	AADCM5146R	Certificate under Section 197(1) of the Income Tax Act, 1961 relating to deduction of tax at source TDS Circle 75(1), Delhi
3.	AY 2020-21	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.
4.	AY 2021-22	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.
5.	AY 2022-23	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.
6.	AY 2023-24	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.
7.	AY 2024-25	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.
8.	AY 2025-26	AADCM5146R	Office of TDS circle 75(1), Delhi - Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi – 110092.

68. Having said that the submission of Mr. Kapoor is primarily that for several years the petitioner has filed multiple tax and non-tax writ petitions before this Court, all of which have been entertained and adjudicated without jurisdictional objection including ***Make My Trip (India) Pvt. Ltd. (supra)***. That apart, we find that the orders under Sections 154/201(1)/201(1A) for the AYs 2018-19 and 2019-20 dated 22.08.2025 have been passed from the aforesaid Circle 75(1), Laxmi Nagar, New Delhi, to which a reference has been made by the respondents in support of their submission that recovery that has to be effected by the Revenue from the petitioner.

69. Suffice to state, except the impugned order which also is addressed to the office of the petitioner in Delhi, the orders issuing the certificates under Section 197 of the Act and the order dated 22.08.2025 under Section 154/201(l)/201(1A) of the Act, were issued by Circle 75(1), Laxmi Nagar, New Delhi. So, in view of the aforesaid position, in the peculiar facts of this case, we are not inclined to reject the petition on this ground i.e., territorial jurisdiction.

70. Another submission made by Mr. Sinha is that the remedy for the petitioner is to file a revision petition under Section 264 of the Act. In this regard, we may state that the jurisdiction under Article 226 of the Constitution of India is not barred for this Court to adjudicate a petition against the rejection of application under Section 197 of the Act.

71. The submission of Mr. Kapoor is that the respondents have issued certificates for three immediately preceding FYs at 0.30% and there being no change in the facts and circumstances, the respondents could not have

taken a contrary view and ought to have granted a '*NIL Withholding Certificate'*.

72. On this, the submissions of Mr. Sinha can be summed up in the following manner:-

(i) On 25.02.2025, orders have been passed under Section 201(1)/1A for the financial year 2017-18 and 2018-19 raising a demand of Rs. 9.89 crores and Rs. 10.61 crores, which demands have now been reduced to Rs. 4,50,73,009/- and Rs. 4,60,59,833/- respectively.

(ii) As per the information given by the petitioner, demands of Rs. 71,58,029/- and Rs. 3,71,098/- are pending rectification with the Assessing Officer.

(iii) No evidence has been placed by the petitioner that the demands are stayed.

(iv) A demand of Rs. 56,33,776/- has been raised against the petitioner, against which the petitioner has filed an appeal, which is pending adjudication.

(v) An outstanding amount of Rs. 5,91,27,449/- is collectible as per Annexure-12 submitted by assessee.

(vi) As per Rule 28AA of the Rules, there is substantial tax liability including TDS default which materially impacts the consideration for issuance of certificate under Section

197 of the Act, and '*NIL Withholding Certificate'* has been rightly denied.

73. These submissions of Mr. Sinha have been contested by Mr. Kapoor by stating that the petitioner is entitled to tax refund of Rs. 84,10,73,810/- from the years 2016-17 to 2023-24. In this respect, we may reproduce the details of the refund as per the petitioner and the demand as per the Revenue in the following manner:-

AS PER THE PETITIONER

AY	Amount	Remarks
2023-24	57,07,97,860 (Refer Note 1)	Pursuant to rectification order (dated September 18, 2024) r/w intimation u/s 143(1). Letters pending with AO for disposal.
2022-23	6,96,53,092	Pursuant to order dated March 31, 2024. u/s 143(3). Rectification filed for loss set off. Pending with AO.
2021-22	10,96,58,323	Pursuant to order (dated February 6, 2024) u/s 143(3). Partial refund received. Letters filed for balance refund, pending with AO.
2020-21	1,77,19,913	Pursuant to order (dated January 17, 2023) u/s 154. Interest u/s 244A short granted. Rectification pending with AO for disposal.
2018-19	6,75,53,521	Pursuant to order (dated May 26, 2021), u/s 143(3). Interest u/s 244A short granted. Rectification pending for disposal till date.
2016-17	56,91,101	Pursuant to order dated December 26, 2019, u/s 143(3). Interest u/s 244A short granted. Refund of Rs. 3,57,72,632 received. Part refund of Rs. 56,91,101, yet to be received.
	84,10,73,810	

AS PER THE REVENUE (in terms of the table given by the petitioner)

AY	Demand raised against	Original outstanding demand	Demand outstanding as of the date
2018-19	PAN	71,57,049	71,57,049
2019-20	PAN	3,71,098	3,71,098
2021-22	PAN	56,33,776	46,69,960 vide rectification order dated May 22, 2024)
2013-14	TAN	70,40,481 (Refer Note 1)	70,40,481
2014-15	TAN	2,28,54,410 (Refer Note 1)	2,28,54,410
2018-19	TAN	9,89,79,279	4,50,72,009 (rectified vide rectification order dated 22.08.2025)
2019-20	TAN	10,61,47,079	4,60,59,833 (rectified vide rectification order dated 22.08.2025)
2024-25 (Q3)	TAN	1,02,080	1,02,080
2025-26 (Q3 and Q4)	TAN	52,86,640	52,86,640
2026-27 (Q1)	TAN	21,89,740	21,89,740
		25,57,61,632	14,08,03,300

74. It is important to note that there is no denial that for the past many years, the respondents/Revenue have issued certificates withholding tax at lower rate in the following manner:-

Date of Certificate	A.Y.	Rate of Withholding tax
01.06.2024	2025-26	0.30%
09.06.2023	2024-25	0.30%
05.08.2022	2023-24	0.30%
05.05.2021	2022-23	0.10%
29.06.2020	2021-22	1.50%
29.05.2019	2020-21	1%, 1.50%, 4%
20.07.2018	2019-20	1%, 1.50%, 3%

15.05.2017	2018-19	0.75%, 1.5%

75. The law insofar as what should be the relevant consideration for issuance of certificate of this nature is well settled. Rule 28AA of the Rules, which prescribes a formula for determining the appropriate rate of TDS based on the estimated tax liability and existing demand. It is also a settled law in terms of ***Manpower Group Service Pvt. Ltd. (supra)*** that, an order under Section 197 of the Act must be reasoned and cannot arbitrarily fix rates without justification. In this case, we find that no reasons have been given by the respondents to reject the application except stating that there are demands of Rs. 23,80,63,189/-, against the TAN of the petitioner. It was the submission of Mr. Kapoor, while considering the application of the petitioner the respondents sought specific clarification regarding outstanding tax demand of Rs.1,50,65,760/- and Rs. 11,660/- and never for the demand aggregating Rs.23,50,21,249/-

76. In any case, it is a conceded position that, even the cumulative demand of Rs. 23,50,63,189/-, (Including Rs.9,89,79,279/- and Rs.10,61,47,079/- which were added on 25.02.2025) has been reduced/rectified to Rs. 14,08,03,300/-, in terms of rectification orders passed on 22.08.2025, after the impugned certificate dated 17.07.2025 was issued. The figure of Rs. 23,50,63,189/-, has been reduced/rectified to 14,08,03,300/- which aspect has not been considered by the AO. It is necessary to state here that a reference to Rs. 5,91,27,449/-, has been made by the respondents but the quantification and the basis of the said amount has not been given.

77. Suffice to state that, in the past, withholding certificates were issued at rates between 0.10% to 4% and the rejection of application has the effect of deducting normal rate of tax at source, which is clearly untenable, particularly when no reasons have been given in the impugned order for rejecting the application for NIL withholding certificate, moreso, when an alternative prayer in the application for deduction of tax at the rate as granted by the Revenue in the preceding year, i.e. FY 2024-25 vide the certificate dated 01.06.2024 i.e., at 0.30% was sought.

78. This Court in ***Virgin Atlantic Airways Ltd. v. PCIT, W.P.(C) 5978/2021 dated 29.07.2021***, has observed that :-

> *"**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 isbound 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 abovementioned judgment is reproduced herein below (page 412 of 430 ITR)** :*
>
> ……..

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.*** *"*

(Emphasis supplied)

79. Mr. Sinha has relied upon the following judgments to support his submissions:-

i. In ***Chhabil Dass Agarwal (supra),*** the question was whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of the jurisdiction under Article 226 of the Constitution when an equally efficacious alternate remedy was available to the assessee under the Act. Whereas in the present petition, the challenge is against the rejection of certificate under Section 197 of the Act and a petition under Article 226, is equally an efficacious remedy.

ii. In ***Coforge Solution (P.) Ltd.(supra)***, the respondent/Revenue rejected the application on the ground that the petitioner did not file the return for the last four previous years. Aggrieved by the same, the petitioner filed the writ petition before the High Court. The issue in the case was whether the petitioner therein could have availed the alternative statutory appeal/remedy by filing an appeal challenging the impugned order before the competent authority rather than filing a writ petition under Article 226 of the Constitution. In the said case it was not

pleaded by the petitioner that there was violation of principles of natural justice while passing the impugned order or there was a lack of jurisdiction or procedure required for the decision.

In the case in hand, the impugned order is a non-speaking order and it is the case of the petitioner that such an order violates its principles of natural justice.

iii. In ***Areva T&D, SA (supra)***, the issue was with regard to non-filing of return. The Court held that on a conjoint reading of Sections 195 and 197 it is clear that any opinion expressed at the time of grant of certificate, is tentative or provisional or interim in nature and the same would not debar the Assessing Officer from initiating proceedings under Section 147 on the ground that there has been a change of opinion. Therefore, the contentions of the assessee were to be rejected. The said case is distinguishable on facts.

iv. In ***Ansaldo Engergia SpA (supra),*** the certificate under Section 197 read with Section 44BBB of the Act was cancelled**.** The Court held that even if a certificate for deduction at source at a lower rate was withdrawn, the consequence of such a withdrawal would be that the deduction had to made at a higher rate but ultimately the question of liability was to be decided in the assessment proceedings. Therefore, the judgment is distinguishable on facts.

v. ***Ramjas Foundation and another v. Union of India and Others, (2010) 14 SCC 38***, is also clearly distinguishable on facts as it was

a case wherein the issue was with regard to the Land Acquisition Act, 1894.

vi. In ***Dalip Singh v. State of Uttar Pradesh and Others, (2010) 2 SCC 114***, the issue was with regard to tenancy and land laws. The said case is also distinguishable on facts.

vii. In ***National Petroleum Construction Co. (supra)***, the issue was with regard to Section 9, read with Section 197, of the Act and Article 5 of OECD Model Convention- Income- Deemed to accrue or arise in India (Permanent Establishment). In the present case, the challenge is to an order rejecting application for "Nil Withholding Certificate" and not whether a PE exists in India for issuance of Certificate under Section 197 of the Act hence is clearly distinguishable.

viii. In ***OPJ Trading (P.) Ltd (supra)***, the issue was with regard to the jurisdiction of the Assessing Officer and the Commissioner of Income Tax with respect to the rate at which tax to be deducted. The judgment is distinguishable on facts.

ix. In ***Sis Live (supra)***, the issue was with regard to the jurisdiction exercised by the AO under Section 197 of the Act. The Court disposed of the writ petition by stating that the matter be remanded back to the Commissioner of Income Tax for revision. The factual matrix in the said case is different as the matter was remanded back to the Revenue. Therefore, the said judgment is not applicable to the facts of this case.

80. Mr. Sinha has also relied upon the following judgments to support his submissions on the issue of *res judicata*. Suffice to state they have no applicability to the facts and the issue which falls for consideration and in view of our findings above:

i. ***Messrs H.A. Shah & Co. (supra);***

ii. ***Instalment Supply (Private) Ltd. and another (supra);***

iii. ***Amalgamated Coalfields Ltd. and another (supra);***

iv. ***Distributors (Baroda) Pvt. Ltd. (supra).***

81. In the facts of this case and in view of our discussion, the impugned order/certificate under Section 197 of the Act dated 17.07.2025 is set aside and the matter is remanded back to the AO for him to consider our aforesaid conclusion and then pass a reasoned and speaking order under Section 197 of the Act. This exercise shall be carried out by the AO within a period of two weeks from today. It is ordered accordingly.

82. The writ petition is allowed on the above terms. The pending application is disposed of as infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

MARCH 16, 2026/sr