

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE VIVEK JAIN**

ON THE 10th OF JANUARY, 2024

WRIT PETITION No. 27328 OF 2023

BETWEEN :-

**GOEL CARGO PRIVATE LIMITED
THROUGH ITS DIRECTOR SUNNY GOYAL
S/O SHRI MOTILAL GOEL AGE ABOUT 33
YEARS OCCUPATION BUSINESS R/O
HARAYANA BHAWAN, PANNA ROAD,
SATNA (MADHYA PRADESH)**

....PETITIONER

(BY SHRI SAPAN USRETHE -ADVOCATE)

AND

**1. COMMISSIONER OF INCOME
TAX(TDS) BHOPAL AAYKAR
BHAWAN, OPPOSITE MAIDA MILL,
HOSHANGABAD ROAD, BHOPAL
(MADHYA PRADESH)**

**2. ASSISTANT COMMISSIONER OF
INCOME TAX AAYAKAR BHAWAN
OPPOSITE MAIDA MILL
HOSHANGABAD ROAD BHOPAL
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SIDDHARTH SHARMA – ADVOCATE)

*This writ petition coming on for hearing this day, JUSTICE
SUJOY PAUL passed the following:*

ORDER

1. The petitioner preferred an application under Section 197 of the Income Tax Act, 1961 for issuance of a Lower Deduction of Tax Certificate. During the course of proceeding, the respondents passed orders Annexure P-5 and P-7, which are subject matter of challenge in this petition.

2. The bone of contention of learned counsel for the petitioner is that the petitioner intended to submit an online document dated 1st April, 2023 (Page-35). Said document was not loaded because message was too large. Faced with this, the petitioner preferred a communication on April 3, 2023 at 12 PM (Page-36) in the Traces Portal. It is submitted that while passing the impugned order, (Annexure P-5), it is mentioned that the applicant has not submitted any explanation regarding queries raised whereas the document dated April 3, 2023 aforesaid was loaded on Traces Portal. Thus, the impugned order Annexure P-5 is passed without application of mind.

3. Criticism of Annexure P-7 is founded upon Rule 28-AA of the Income Tax Rules. Learned counsel for the petitioner submits that the application is rejected by holding that the applicant declared very low net profit ratio, which is not at par with similar transport business. It is argued that the respondent no. 2 was competent only to examine the aspect of TDS and had no authority, jurisdiction and competence to look into the aspect of net profit which is within the province of jurisdictional Assessing Officer. By placing reliance on two Division Bench judgments of Delhi High Court in **W.P.(C)11877/2023 Shreyash Retail Private Ltd. Vs. Deputy Commissioner of Income**

Tax TDS Circle 77 (1) & anr. and in W.P. (C) 8041/2021 Cloudbail India Private Limited Vs. The Commissioner Of Income Tax (TDS) Delhi & Anr, it is argued that decision taken by the respondent is in complete ignorance of Rule 28-AA of the Income Tax Rule. The necessary factors mentioned in Rule 28-AA of the said Rule have not been considered.

4. Shri Siddharth Sharma, learned Junior Standing Counsel for the respondents supported the impugned orders. In support of his submission, he also placed reliance on written submissions. It is submitted that as mentioned in Para-3 of the written submissions, it is the satisfaction of the Assessing Officer (A.O.) whether said certificate is to be issued or not. In order to arrive at a satisfaction, one such important factor is veracity of existing and estimated tax liability of an applicant which is net profit ratio. Thus, net profit ratio was rightly taken into account while passing the impugned order Annexure P-7 and, therefore, no fault can be found in the impugned order Annexure P-7.

5. So far document page 35 and 36 aforesaid are concerned, it is submitted that these documents were never received/served through any mode to the department. Thus, the petitioner cannot claim any brownie points on the basis of these two documents.

6. Learned counsel for the parties confined their arguments to the extent indicated above.

7. We have heard learned counsel for the parties at length and perused the record.

8. As noticed above, the parties have taken a diametrically opposite stand regarding furnishing/receiving of document dated 01.04.2023 (page 35) and 3rd April, 2023 (page 36). We have carefully gone through the pleadings of the petition and do not find any categorical pleading about submission of document dated 3rd April, 2023 in the pleadings. Since specific pleading is absent and parties have taken diametrically opposite stand on submission of these documents, it is clear that the same is a disputed question of fact. Since disputed question of fact cannot be gone into in a writ petition, we are unable to give any finding based upon the aforesaid two documents.

9. Before dealing with the remaining contention of the parties, it is apposite to quote Rule 28 AA of the Income Tax Rules. The same reads as under:-

"28AA. (1) Where the Assessing Officer, on an application made by a person under sub-rule (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 sub-section (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 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.”

(Emphasis Supplied)

10. The Delhi High Court in the case of **Cloudtail India Private Limited (supra)** opined that Rule 28 AA is a statutory and mandatory provision. The revenue is under a statutory obligation to act in accordance with the mandate of Rule 28 AA. Even otherwise, this is trite that if a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden. [See : **Baru Ram v. Prasanni AIR 1959 SC 93, Dhanajaya Reddy v. State of Karnataka (2001) 4 SCC page 9** and judgment of this Court reported in **(2011) 2 MPLJ 690, Satyanjay Tripathi v. Banarsi Devi**].

11. A plain reading of Rule 28 AA makes it clear that the ‘satisfaction’ needs to be recorded/determined by A.O. *after taking into consideration* the four factors mentioned in sub-rule (2) of Rule 28-AA. Thus, it is not the subjective satisfaction of A.O., but an objective satisfaction which must be based on Clauses (i), (ii), (iii) and (iv) of sub-rule (2) of Rule 28 AA.

12. If impugned order Annexure P-5 and more particularly Annexure P-7 is examined, it shows that all those four factors have not been taken into account. Pertinently, the factum of receiving Annexure P-3 and P-8 is not in dispute in the instant case.

13. Since impugned orders are passed in clear violation of Rule 28 AA, we are constrained to hold that decision making process adopted by the respondents runs contrary to the requirement of law, i.e. Rule 28 AA.

14. The scope of judicial review in a writ petition is limited. Ordinarily, the Court is not obliged to examine the correctness of the decision. Instead, the Court is obliged to examine the correctness of the decision making process. At the cost of repetition, in our opinion, the decision making process is faulty and impugned order Annexure P-5 and P-7 are passed without considering the relevant factors ingrained in Clause (i), (ii), (iii) and (iv) of sub-rule (2) of Rule 28 AA.

15. Resultantly, both the impugned orders Annexure P-5 and P-7 are set aside. The matter is remitted back to respondent No.2, who shall consider the claim of petitioner in accordance with law and pass a fresh detailed/speaking order thereupon within 30 days from the date of communication of this order. It is made clear that this Court has not expressed any opinion on the merits of the case.

16. Petition is **disposed of**.

(SUJOY PAUL)
JUDGE

(VIVEK JAIN)
JUDGE