



2026:DHC:41-DB



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

% *Date of decision: 5th January, 2026.*

+ W.P.(C) 10259/2025, CM APPL. 42653/2025

GE ENERGY PARTS INC

.....Petitioner

Through: Mr. Tushar Jarwal, Mr. Rahul Sateerja
& Mr. Vikrant A Maheshwari,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

.....Respondents

Through: Mr. Sunil Aggarwal, SSC, Ms. Priya
Sarkar, JSC with Mr. Anugrah
Dwivedi & Mr. Utkarsh Shukla,
Advocates.

(9)

+ W.P.(C) 10260/2025, CM APPL. 42656/2025

GE GLOBAL PARTS AND PRODUCTS GMBH

.....Petitioner

Through: Mr. Tushar Jarwal, Mr. Rahul Sateerja
& Mr. Vikrant A Maheshwari,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

.....Respondents

Through: Mr. Puneet Rai, SSC with Mr.
Ashvini Kumar, Mr. Rishab Nangia &
Mr. Gibran, Advocates.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

J U D G M E N T

DINESH MEHTA, J. (Oral)

1. Both the Writ Petitions involve common questions of law and facts,



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hence, they are decided conjointly, however, the facts from writ petition No. 10260/2025 are taken into consideration.

2. The petitioner, a company incorporated in Switzerland in 2015 is engaged in the business of supplying Gas Turbines, spare parts and carries on offshore repair of machines manufactured outside India. The petitioner claims that it does not have any Permanent Establishment (*hereinafter referred to as 'PE'*) in India.

3. According to the petitioner, no Tax at Source can be deducted from the payments made to it, as no income is earned in India but in spite of clear provisions of the Income Tax Act, 1961 (*hereinafter referred to as 'Act of 1961'*) the buyers are deducting tax at the source from the payment being made to it.

4. The petitioner, therefore, moved applications under Section 197 of the Act of 1961, every year for issuing a certificate of deducting nil tax, which applications have been decided by the respondent no. 1 from time to time, however, while providing that a deduction at the rate of 1.5 percent be made from the payments made to the petitioner.

5. In the year under consideration i.e. assessment year ('AY') 2025-26, however, a certificate dated 16.05.2025 has been issued requiring payment of Tax Deducted at Source (*hereinafter referred to as 'TDS'*) at the rate of 3.5 percent.

6. It is the petitioner's assertion that by filing the application before the respondent no. 1, the petitioner had made a submission that in previous years also, certificates requiring deduction at the rate of 1.5 percent had been issued and earlier also, whenever a certificate of higher rates was issued, the petitioner preferred writ petitions being WP(C) No. 13189/2021 and



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10055/2022 and the same were allowed directing the Income Tax Department to issue certificate with deduction at the rate of 1.5 percent.

7. Learned counsel for the petitioner argued that in spite of the clear factual and legal position, the respondent no.1 has illegally issued a certificate requiring the deduction of tax at the rate of 3.5 percent.

8. Learned counsel further argued that the approach of the respondents is erroneous and contrary to the facts and law.

9. Mr. Puneet Rai, learned Senior Standing Counsel for the respondents, on the other hand, submitted that it may be true that the certificates at a lower rate of 1.5 percent were issued to the petitioner in the earlier years but while issuing the impugned certificate dated 16.05.2025, the Assessing Officer has recorded a finding that during the proceedings of AY 2022-23 it was found that the petitioner-assessee has a PE in India. He added that it was only in the wake of such finding that a certificate at a rate higher than 1.5 percent (i.e. at 3.5 percent) was issued to the petitioner.

10. He submitted that ultimately, the grant of certificate at nil rate or at higher rate is the discretion of the concerned Assessing Officer having regard to the facts and circumstances of each case and since the factum of PE has come on record, no error can be alleged in the order dated 16.05.2025.

11. Learned counsel for the petitioner at this juncture interjected and submitted that such finding of the petitioner having PE in India recorded during proceedings of AY 2022-23 has been set aside by the Income Tax Appellate Tribunal (*hereinafter referred to as 'ITAT'*) vide its order dated 17.10.2025. He argued that the impugned order deserves to be quashed and set aside on such count as well.



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12. Heard learned counsel for the parties.

13. It is not in dispute that prior to AY 2022-23, the respondents have been issuing certificates under Section 197 of the Act of 1961 at 1.5 percent and that the High Court had set aside orders stipulating deduction at higher rate whenever certificate of higher rate was issued and directed the respondents to issue certificates at the rate of 1.5 percent.

14. For AY 2022- 23, the respondent No. 1 held that the petitioner is having a PE in India and therefore, when the order dated 16.05.2025 was passed, there existed some rationale or justification. However, by order dated 17.10.2025, such finding has been set aside by the ITAT and therefore, the very ground available with the respondents to justify or substantiate the higher deduction of tax given in order dated 16.05.2025 has lost its foundation.

15. The impugned order dated 16.05.2025 for deduction of tax at 3.5 percent is, therefore, quashed and set aside. The respondents are directed to issue a fresh certificate to the petitioner providing deduction of tax at the rate of 1.5 percent. Fresh certificate be issued within a period of 15 days from today.

16. We are conscious of this fact that the order of ITAT can be challenged by way of an appeal under Section 260A of the Act of 1961 before this Court. We are informed that no appeal has been filed so far (maybe because the limitation for filing such appeal is still continuing).

17. While allowing both the writ petitions with the aforesaid observations, we hereby direct the respondents to continue issuing certificate(s) under Section 197 of the Act of 1961, to the petitioner for future years as well, as and when application in this regard is filed.



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18. The respondents shall be free to issue certificate of higher rate than 1.5 percent in the following contingencies:

- (i) if the order dated 17.10.2025 passed by the ITAT for AY 2022-23 is set aside or otherwise modified;
- (ii) if the Income Tax Department is in receipt of any information or evidence showing existence of petitioner's permanent establishment in India.

19. However, in case the Income Tax Department is of the view that the petitioner is having a PE in India, it shall issue a notice to the petitioner eliciting its response and when the petitioner is unable to satisfy the respondents that PE is not in existence, then only, the respondents shall issue a certificate of higher tax rate under Section 197 of the Act of 1961.

20. In the eventuality of issuance of certificate of higher tax rate, the petitioner's right to lay challenge to such order shall obviously remain reserved.

21. Both the writ petitions are allowed, as indicated above. All pending applications stand disposed of.

**DINESH MEHTA
(JUDGE)**

**VINOD KUMAR
(JUDGE)**

JANUARY 5, 2026/nk