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

% *Date of Decision : 14.01.2026*

\+ W.P.(C) 16354/2025 CM APPL. 66967/2025

SFDC IRELAND LIMITED .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aniket D. Agrawal and Mr. Samarth Choudhari, Advs.

versus

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION 3 NEW DELHI & ANR. .....Respondents

Through: Mr. Sunil Aggarwal, SSC, Ms. Priya Sarkar, JSC and Mr. Anugram Dwivedi, Advs.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

DINESH MEHTA, J. (ORAL)

1. The present petition preferred under Article 226 and 227 of the Constitution of India, calls in question an order dated 26.09.2025 passed and corresponding certificate dated 11.09.2025 issued by the Assistant/Deputy Commissioner of Income Tax, (International Taxation) Circle 3(1)(2) New Delhi (*hereinafter referred to as 'the competent officer'*). Said certificate (dated 11.09.2025) concerns the petitioner as it mandates its reseller or payer-salesforce.com India Private Limited to deduct tax at the rate of 10% on the amount to be paid to the petitioner.

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2. Mr. Ajay Vohra, learned Senior Counsel appearing on behalf of the petitioner, read the impugned order passed under Section 197 of the Income Tax, 1961 (*hereinafter referred to as 'the Act of 1961'*) and submitted that the competent officer has proceeded with pre-occupied mind and was swayed by the revenue collection rather than objectively going into the essence of transaction and considering legal position. He added that such approach of the competent officer is apparent from the fact that in earlier part of his order he had asked the petitioner as to why his application should not be transferred to Bengaluru and in subsequent part instead of transferring the matter to Bengaluru, he went ahead and issued a certificate at 10% rate instead of certificate at nil rate as claimed by the petitioner.

3. Mr. Vohra informed that the petitioner is a resident of the Republic of Ireland within the meaning of Article 4 of the India-Ireland Double Taxation Avoidance Agreement (*hereinafter referred to as 'DTAA')*, and is engaged in the business of operating Customer Relationship Management ('CRM') offering applications and platforms including, sales, service, marketing and related products and services. These products are standardized and the customers can pick different combinations of products that are best suited for their requirements. The products help the customers in generating reports and summaries of the data which is fed into the software by the clients themselves.

4. He added that these cloud-based customer management platforms enable its users to track customer requests, digital marketing, marketing automation, creation of e-commerce platforms and a host of analytical and predictive functions.

5. Learned Senior Counsel asserted that the Petitioner does not have a

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place of business or any employee or any other sort of presence in India, nor does it have any Permanent Establishment (*hereinafter referred to as 'PE')* in India, in terms of Article 5 of the India-Ireland Double Taxation Avoidance Agreement (DTAA).

6. Having given the background of the nature of services provided by the petitioner to the customers in India, albeit through its reseller and maintaining that neither the petitioner-company is having PE in India nor is any amount paid to it is taxable under the Act of 1961, he informed that for the Financial Year (*hereinafter referred to as 'FY')* 2023-24, though a certificate under Section 197 of the Act of 1961 was issued at 10% but pursuant to the order dated 11.03.2024, passed by this Court in the petitioner's writ petition, a certificate of nil rate was issued. He stated that thereafter the return of income was accepted as such and no tax was imposed or levied upon the petitioner.

7. He further informed that during FY 2024-25, the officer issued a certificate at 2% tax rate which was set aside by this Court in petitioner's second writ petition on 17.02.2025 and pursuant thereto a certificate of nil rate came to be issued for the AY 2025-26 as well.

8. Learned Senior Counsel submitted that though nature of petitioner's transactions and business remained the same during the FY under consideration i.e. 2025-26, but when the petitioner applied for a certificate under Section 197 of the Act of 1961, the competent officer has issued a certificate dated 11.09.2025 again requiring 10% deduction on the payments made to it. He added that impugned certificate dated 11.09.2025 was issued without assigning any reason and when asked, the Assessing Officer provided a reasoned order (dated 26.09.2025) to the petitioner.

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9. Having read the impugned order in its entirety, learned Senior Counsel submitted that though the respondent was cognizant of the above noted facts that the orders which were issued by him requiring deduction at 10% and 2% for the FYs 2023-24 and 2024-25 respectively have been set aside by this Court in the writ petitions filed by the petitioner yet he has mechanically passed the order under challenge that too without giving any reason as to how the transactions which the petitioner has made or likely to make during this year (F.Y. 2025-26) are liable for tax under the Act of 1961.

10. It was contended that the competent officer was moved by the volume of sales which the petitioner has effected in India (Rs.1083,17,25,062/-) and has cursorily passed the order requiring the payer-SDFC India to deduct tax at the rate of 10% justifying his action by noting that this is only advance tax and subject to final adjustment on the completion of assessment proceedings.

11. Learned Senior Counsel argued that the provisions of Section 197 of the Act of 1961 are required to be read and considered in light of the purpose for which they have been inserted and unless the competent officer records the reason as to how the transactions carried out by the entity are taxable, then he cannot issue a certificate at any rate other than 'Nil'.

12. He asserted that no change has taken place in the nature of transactions which the petitioner has carried out in India and contended that the officer was supposed to issue a certificate at nil rate. Learned Senior Counsel argued that the impugned order suffers from manifest error and is arbitrary, if not *mala fide,* and hence, the same deserves to be quashed.

13. Mr. Sunil Aggarwal, learned Senior Standing Counsel on the other

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hand argued as under :

(i) Income Tax proceedings are separate for each assessment year and the Assessing Officer can take a different view in subsequent assessment years.

(ii) While passing the earlier orders, the scheme of the Act, more particularly the part that relates to tax deduction at source given in Section 195 of the Act of 1961, *vis-a-vis* the provision given under Section 197 providing issuance of certificate of nil or lesser rate of tax was not placed before the High Court and therefore, those orders passed in ignorance of statutory scheme are *per-incurium* and thus not binding.

(iii) Form 13 submitted by the petitioner has been tampered with.

(iv) The signatory (Mr. Himank Bhatia) who has submitted the application under Section 197 of the Act of 1961 to issue a nil rate certificate has a residential address of India, an Indian mobile number and has been uploading the documents regularly and even accessing the e-mails from India. Therefore, the petitioner-company should be construed to be a resident in India.

(v) Form 10F has also been uploaded by the very same person (Mr. Himank Bhatia).

(vi) Language of Section 6(3) which contains definition of resident of India clearly suggests that the petitioner-company should be treated to be a company resident in India.

14. In support of his contention that in case the statutory scheme has not been considered by the Court, the judgment can be reviewed, he cited judgment of Hon'ble the Supreme Court in the case **Commissioner of**

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Customs v. Canon India Private Limited reported in [2025] 4 SCC 509.

15. Learned SSC also cited the judgments in **Central Council for Research in Ayurvedic Sciences v. Bikartan Das** reported in 2023 INSC 733 and **Hari Vishnu Kamath v. Syed Ahmad Ishaque & Ors.** reported in [1954] 2 SCC 881 in order to apprise the Court about the nature and scope of writ of certiorari and contended that if the impugned order does not contain sufficient reasons or the same has not been drafted properly, Court can go into the contentions advanced by the Department's counsel. Judgment dated 23.12.2025, passed by this Court in the case of **ZSCALER INC v. Deputy Commissioner of Income Tax Circle 3(1)(1), New Delhi**, NC: 2025:DHC:11752-DB was cited to pray that the matter be remanded back to the competent officer to pass an order afresh after considering all material facts.

16. Mr. Vohra, learned Sr. Counsel in his rejoinder arguments submitted that even if the arguments advanced by Mr. Aggarwal are considered, the petitioner's rights to get a certificate at nil rate cannot be denied. He submitted that so far as the statutory scheme is concerned, it cannot be presumed that the Courts while passing the orders was not aware of the sections, provisions and the effect of Section 195 and 197 of the Act of 1961.

17. He further submitted that the judgments in petitioner's case passed earlier takes into account not only these provisions (Sections 195 & 197 of the Act of 1961) even Rule 28AA of the Income Tax Rules, 1962 (*hereinafter referred to as 'the Rules')* and argued that the contention that the earlier judgments passed in petitioner's case do not take into consideration the scheme of the Act is wholly contrary to facts, apart from

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being unprofessional.

18. In relation to the judgment dated 23.12.2025 passed by this Court in the case of ZSCALER INC (supra), he submitted that the facts in the said case were different inasmuch as in that case, it had come to the notice of the Court that in subsequent year the Income Tax Appellate Tribunal (ITAT) had allowed the assessee's appeal was allowed and the assessment order passed by the AO was set aside, holding that the income of the petitioner therein was not liable to be taxed under the provisions of the Act of 1961 and it was in those circumstances that the High Court chose to remand the matter, which facts are not available, as petitioner's transactions have never been held taxable.

19. In relation to the other two judgments viz Bikartan Das (supra) and Hari Vishnu Kamath (supra), it was argued by learned Senior Counsel that these judgments only delineate the scope of writ of certiorari and they do not in any manner whittle down what has been held by Hon'ble the Supreme Court in the case of **Mohinder Singh Gill v. Chief Election Commissioner**, reported in [1978] 1 SCC 405.

20. So far as Mr. Aggarwal's contentions in relation Mr. Himank Bhatia being resident of India and still furnishing Form 13 and 10F on behalf of the petitioner-company and filing the instant writ petition is concerned, it was strongly retorted by contending that Himank Bhatia is an employee of SFDC India, to whom Power of Attorney has been given by the petitioner-company.

21. Heard learned counsel for the parties and perused the material.

22. While observing that most of the arguments which Mr. Aggarwal has advanced are not based on the facts as indicated in or arising out of the order

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under challenge. However, dealing with the argument about the person filing the forms and signing the writ petition on petitioner's behalf, we are of the view that simply because a power of attorney has been given to a person residing in India and because all the required formations are done by such person, a company incorporated in Ireland or in any other country outside India, cannot be held to be a company resident in India within the meaning of Section 6(3) of the Act of 1961. For such purpose, one has to see the statutory provisions and according to which, the mandatory requirement is, that entire business of such company should be managed/controlled in India. Neither any finding has been recorded by the competent officer nor does it emanate from the record produced before us, that the petitioner company is resident in India or is having a PE in India.

23. The mere fact that Form 13 and 10F have been filed by Mr. Himank Bhatia-a resident of India (admittedly having a Power of Attorney in his favour), makes hardly any difference to petitioner's right to get a certificate of nil rate. The petitioner can neither be non-suited on such flimsy grounds nor can it be held as a company incorporated or situated in India.

24. Mr. Aggarwal's contention that Income Tax Act proceedings are separate for each year is correct. If considered in abstract, there cannot be any divergence of opinion on this aspect. But it is for the AO or the competent authority to bring on record difference in the fact-situation or some new fact must emerge which changes the residential status of the petitioner so that it can be inferred to have a PE in India or some change must take place which makes its receipts otherwise liable to be taxed under the provisions of the Act of 1961.

25. The judgment of Hon'ble the Supreme Court in Canon India Private

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Limited (supra) is not applicable in the present factual backdrop. It cannot be said so casually that the statutory scheme was not considered by the Division Benches deciding petitioner's writ petition for earlier FYs. A perusal of the earlier order passed in petitioner's case shows that even Rule 28AA of the Rules has been dealt with. That apart, simply because the provision has not been mentioned, in an order which is repetitive in nature, it cannot be said that the statutory scheme was not brought to the notice of the Court when it decided the writ petitions in 2023 and 2024. Needless to say that the Delhi High Court is flooded with the litigation revolving around issuance of certificates under Section 197 of the Act and the Benches are given assistance by able Senior Standing Counsel of the Department.

26. The remaining two judgments in Bikartan Das (supra) and Hari Vishnu Kamath (supra) relate to powers and scope of writ of certiorari. The powers of the Courts while dealing with the writ of certiorari are well known. These two judgments hold that the High Court can call for the record and examine the reason to meet the ends of justice. But these judgments in no way upturn what has been held by Hon'ble the Supreme Court in the case of Mohinder Singh Gill (supra). "A lame order can be made to stand on the crutches in the form of the reasons set out in the counter affidavit".

27. A simple look at the order under consideration shows that it does not record any reason worth the name to justify deduction of tax at the rate of 10%; the only reason given therein is :

> *"Be that as it may, coming to the issue of tax withholding rate, it is again noteworthy that the certificate issued u/s 197 is only an interlocutory and interim arrangement so as to enable the applicant to receive payments at a rate as determined in the facts*

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of the case. The tax determination u/s 197 is not final and is subject to the final assessment of the case."

28. Having read the order and heard learned Senior Standing Counsel, we are constrained to observe that the approach of the competent officer has been arbitrary and propelled, rather impelled by the revenue considerations. In the over-enthusiasm of fetching extra revenue that too in the form of TDS, he has even side-tracked two previous judgments of this Court, passed in petitioner's own case.

29. True it is, that in an appropriate case, the AO can take a detour from the view which has been taken by the High Court for a preceding year, but for that, he must record a concrete finding in relation to the change that has taken place during the relevant period, so also the fact that how the transactions being carried out by the petitioner are exigible to tax under the prevailing regime of the Act of 1961.

30. Having not done so, the officer has failed to discharge his statutory duties, envisaged under Section 197 of the Act of 1961. Mere use of expression 'may' given under Section 197 of the Act or purported discretion, the competent officer cannot be allowed to take whatever view he wishes to take. "Not to follow the binding precedents of the High Court cannot be countenanced in any manner and such approach renders the order a nullity".

31. The present authority and the authorities dealing with the application under Section 197 of the Act of 1961 are supposed to adopt a pragmatic and justice oriented approach-they should decide the applications in accordance with law, rather than being guided by the Revenue which they might generate, if the certificate(s) are issued at 10% rate or rate higher than 'nil'

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rate of tax.

32. Such approach of the authorities hit at the very root of the business environment and the very idea of providing ease of doing business. Such orders restrict, rather constrict free flow of trade within the country so also discourages foreign entities from doing business in India. It also creates environment unconducive to trade & industry and in turn hinders the economic growth of the country.

33. "Ease of doing business cannot be confined to slogans and Government policies; it has to percolate down in executive actions and quasi judicial orders." Passing similar orders year after year portrays an unhealthy and unwelcoming picture of the country's bureaucracy on the one hand and gives pseudo satisfaction to the Revenue on the other. Because in any case on furnishing the return, such amount which has a nature of advance tax, has to be refunded with interest in case the transactions are not exigible to tax. The Act of 1961 provide enough power to bring the payment made to foreign companies to tax-net, if such payments lead to generating income exigible to tax under the Act.

34. For the aforesaid reasons, the impugned order dated 26.09.2025 is liable to be quashed and set aside which we hereby do. While doing so, we were thinking of imposing cost upon the author of the order, but refrained from doing so, as the order on ultimate analysis is found to be arbitrary but not *malafide*.

35. (i) The petition is, therefore, allowed.

(ii) The impugned order dated 26.09.2025 (annexure A) so also the certificate dated 11.09.2025 requiring deduction of tax at the rate of 10% is set aside.

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(iii) The competent officer or any other authority who is supposed to consider the petitioner's application under Section 197 of the Act of 1961, shall issue a certificate to the effect of nil rate of tax not only for the AY 2026-27, but also for the subsequent years.

(iv) The competent authority dealing with petitioner's subsequent application(s) under Section 197 of the Act of 1961 shall not be bound by direction given in clause(iii) above, if he comes to a conclusion and records a finding that the petitioner is having a PE in India and the transactions which the company has carried out in India are liable to be taxed in India. However, before recording such finding, a notice in this regard shall be issued to the petitioner.

(v) It will also be required from the petitioner-company to disclose, truly and fully, all facts in its applications to be filed each year. It shall be required of the petitioner to extend full cooperation when any such notice (as provided in clause (iv) above) is issued for the subsequent year(s).

36. With these observations/direction, the petition along with pending application stands disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 14, 2026/*ss*

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