(2016) 02 P&H CK 0073

In the Punjab And Haryana At Chandigarh

Case No : CR No. 1208 of 2016

Ashok Kumar — APPELLANT

Vs

State of Haryana and another — RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 2 PLR 233

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Final Decision : Disposed off

Judgement

Amit Rawal, J.(Oral) - The petitioner-decree holder is aggrieved of the order whereby execution application has been dismissed on the ground that the character and nature of the land was not agricultural and therefore, the act of the department in deducting TDS on the enhanced amount containing element of interest also was not justifiable.

2. Learned counsel for the petitioner submits that as per the ratio decidendi culled out by this Court in RA-CR No. 46-CII of 2014 in CR No. 7740 of 2012 decided on 2.2.2016 (Jagmal Singh and another v. State of Haryana and another) relying upon the judgment of Hon''ble Supreme Court in Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF) Civil Appeal No. 4401 of 2009 decided on 16.7.2009 reported in 2009 (9) JT 445 wherein it has been held that TDS would be charged on the enhanced amount compensation but not on the interest and this aspect has totally been ignored by the court below.

3. He further submits that jamabandi and khasra girdawari have not been noticed by the court below in holding that the land was not agricultural and therefore Section 194-A of the Income Tax Act, 1961 would not come into play, therefore, the payment of enhanced compensation was not liable to be deducted at source.

4. I have heard learned counsel for the petitioner and appraised the paper book.

5. In view of the aforementioned facts, the finding arrived at by the trial court is not justifiable and against the revenue record. As per jamabandi Annexure P-1 the nature of the land is Chahi Nehri (agricultural). There is no reflection that the property was gair mumkin. The executing court has misread the jamabandi and more so, in view of the ratio decidendi culled out in RA-CR No. 46-CII of 2014 in CR No. 7740 of 2012 decided on 2.2.2016 (Jagmal Singh and another v. State of Haryana and another), which reads thus:-

1. The applications for review is sought by the Union of India on the plea that the orders passed by this Court in the absence of any representation of Union, failed to take note of an amendment in the Income Tax Act. The said provision made interest component assessed on additional amount on land acquisition awards under Section 28 of the Land Acquisition Act as taxable. The amendment through Section 145-A (b) took effect from April 2010. I have relied on a judgment of the Supreme Court in Commissioner of Income-tax, Faridabad v. Ghanshyam (HUF) Civil Appeal No. 4401 of 2009 decided on 16.7.2009 reported in 2009 (9) JT 445 to hold that the interest awarded on enhanced compensation is not taxable. The effect of the judgment has been statutorily abrogated by virtue of the amendment. The award of the Collector itself has been passed subsequent to the amendment on November 10, 2010. A Division Bench of this Court in Hari Kishan v. Union of India, 2014 (2) PLR 662 and another judgment in Attar Singh and others v. State of Haryana and others, CWP No. 10125 of 2015 dated 3.9.2015 have reiterated the position of taxability on enhanced compensation under the Land Acquisition Act on the basis of the amendment and the fact of inapplicability of Ghanshyam ''s case (supra), after the amendment to the statute. The decisions already rendered by the Court were parentally wrong, failing to note of the statutory amendment and its effect on the awards in the two decisions, referred to above.

2. The orders already passed are recalled and the review applications are allowed holding that interest on the additional award is taxable under income tax and liable to be deducted at the time of deposit."

the TDS is only liable to be deducted on the enhanced amount and not on interest.

6. Keeping in view the aforementioned facts, I am of the view that the matter is required to be re-appraised. The impugned order is set aside. The matter is remitted back to the executing court to decide the matter afresh, keeping in view the aforementioned observations.

7. The civil revision stands disposed of.

