(2010) 06 KL CK 0130

In the High Court Of Kerala

Case No : Writ Petition No. 12347 of 2010

George APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:
Income Tax Act, 1961 — Section 18, 194LA, 2(14)

Citation : (2010) 06 KL CK 0130

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Alexander Joseph, for the Appellant; Mathew George Vadakkel, Millu Dandapani, P.K.R. Menon and Jose Joseph, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The Petitioner is aggrieved of the deduction of 10 per cent of the compensation deposited by the requisitioning authority in the Land Acquisition court towards the income tax, which according to the Petitioner is not permissible to be deducted, the land in question being an agricultural land and is clearly excluded from the provisions of deduction of tax u/s 194LA of the Income Tax Act.

2. The sequence of the events as narrated in the writ petition shows that, the property of the Petitioner was acquired in connection with the establishment of sub-station for the Power Grid Corporation of India, who is the third Respondent herein. The property is situated in Pallikkara village in Ernakulam District. On acquisition of the property pursuant to the notification issued under the relevant provisions of the Land Acquisition Act, the compensation was awarded by the Lassessing officer. Being aggrieved of the inadequacy of the quantum, it was caused to be referred u/s 18, pursuant to which the matter was considered by the reference court and the compensation was enhanced. The entire compensation so enhanced by the reference court was deposited by the third Respondent along with the compensation payable in other cases as well (which were considered and dealt with by the reference Court, by passing a common

verdict in 33 cases). However, while submitting Ext. P1 letter along with the statement as to the particulars of the compensation payable, the third, Respondent also made a stipulation to deduct the income tax payable as per the statute, which according to the Petitioner is not correct or sustainable and is under challenge in this writ petition.

3. The learned Counsel for the Petitioner submits that, pursuant to. the deposit of the compensation amount, the Petitioner preferred a cheque application for the entire amount, which however was not accepted by the execution Court, observing that it was not proper. This made the Petitioner to submit a subsequent cheque application limiting the same to 90 per cent of the compensation and got it disbursed. Subsequently, the Petitioner preferred Ext. P2 cheque application for the remaining 10 per cent, which is the subject-matter of dispute and the Petitioner has come up with a prayer to direct the Sub court to consider and pass orders on Ext. P2, also seeking to declare that the compensation amount deposited in LAR No. 260 of 2007 as per Ext. P1 is not liable to be withheld towards the payment of income tax.

4. Learned Counsel for the Petitioner submits that, the contentions of the Petitioner are mainly two fold, firstly that, the income tax can only be in respect of the interest amount and not on the entire compensation. Since the interest portion has been separately dealt with and given by the third Respondent as per Ext. PI, it is not a matter of ambiguity, which ought to have been considered and acted upon without any delay. The next contention is that the property belonging to the Petitioner, which was acquired on behalf of the third Respondent, is an agricultural property and hence the mandate u/s 194LA of the Income Tax Act is not applicable, by virtue of the exemption provided in the said provision. It is also stated that the term agricultural land is defined u/s 2(14)(iii)(a) and (b). According to the Petitioner, the exclusion stipulated therein is not applicable to the case in hand, the property not being situated in a municipal area and not within 8 kms. as specified therein, or no notification has been issued by the Central Government as specified otherwise. This being the position, it is not correct or proper to relegate the Petitioner to approach the IT authorities to get necessary certificates, which hence is sought to be interfered by this Court.

5. Learned standing counsel. submits with reference to the contents of the statement that, whether the land in question is an agricultural land or not, is a question of fact, which is to be considered by the IT authority with reference to the actual materials in connection with the issue. It is also stated that the power to adjudicate upon such issue is never vested with the Lassessing officer as made clear by this Court in the decision reported in Nalini Vs. Deputy Collector, , which involved a similar circumstance. The learned Government pleader appearing for the acquisitioning authority submits that the compensation was claimed for by the Petitioner stating the property was a dry land and not a wet land. It was accordingly that the enhancement was sought for and obtained from the reference Court. The matter is stated as still pending in appeal before this

Court for further enhancement of the compensation. After obtaining the compensation by describing the property as a dry land and also after obtaining the enhanced compensation, the Petitioner is now trying to have the benefit of categorizing the land as an agricultural land u/s 2(14)(iii)(a) and (b) of the Income Tax Act which is not correct or proper and it requires to be considered by the appropriate authority, on the basis of the relevant facts, figures and evidence.

6. Considering the rival submissions, this Court finds that the primary question to be considered and dealt with is, whether the property of the Petitioner is an agricultural land or not as defined u/s 2(14)(iii)(a) and (b) of the Income Tax Act, so as to avail the exemption provided u/s 194LA of the Income Tax Act. Even though there is no case for the Respondents that the property is situated in a municipal area or within 8 kms. as specified, whether there is any notification issued by the Central Government or not, is not discernible from any of the materials on record. That apart, whether any such notification is there or not is a matter to be considered by the concerned authority after calling for the requisite materials. The Central Government who is the concerned authority to issue notification as above, is not a party to the present proceedings.

7. This Court is not in a position to adjudicate the matter with regard to the merits and holds that it requires to be considered by the appropriate authority of the IT department with reference to the materials on record.

8. In the above circumstance, it is for the Petitioner to approach the IT authorities by filing necessary proceedings and to get necessary certificates with regard to the nature and character of the land concerned and to have it produced before the concerned authority. Once the Petitioner produces the certificate as to the nature of the property showing it as an agricultural land as contended, the Sub court shall consider the same and appropriate orders shall be passed on Ext. P2 cheque application. If the amount has already been parted with and deposited with the IT Department, it will be open to the Petitioner to submit such certificate before the IT authority, to get necessary refund.

The writ petition is disposed of accordingly.

