
(2012) 01 KAR CK 0345

In the Karnataka High Court

Case No : Writ Petition No's. 69000 to 69001 of 2010 (LA-Res)

Guru Rao and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) ILR (Kar) 6485

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.N. Hatti, for the Appellant; Y.V. Raviraj, Advocate for R3 and Smt. K. Vidyavathi, AGA for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J.—The short question for consideration in these writ petitions is whether the Land Acquisition Officer, Koppal, the second respondent herein is justified in deducting 10% of the interest awarded under Sections 28 and 34 of the Land Acquisition Act, 1894 (for short "the Act") towards deduction of tax at source though the lands acquired were agricultural lands? The petitioners were the owners of agricultural lands at Arekeri Village, Yelburga Taluk, Koppal District. The said lands were acquired by the State Government for Hirehalla Irrigation Project. The second respondent made an award u/s 11 of the Act determining the compensation. Not being satisfied with the quantum of compensation, the petitioners sought reference u/s 18 of the Act. The Reference Court enhanced the compensation. The petitioners filed appeals before this Court u/s 54 of the Act seeking further enhancement of the compensation.

2. It is an admitted fact that this Court awarded compensation at Rs. 80,000/- per acre together with all other statutory benefits. Since the Land Acquisition Officer did not satisfy the decrees, the petitioners made representation to the Land Acquisition Officer requesting him to pay the compensation in terms of the said decrees. They have further requested him not to deduct the tax at source. However, the Land Acquisition Officer has proceeded to deduct 10% of the

interest awarded under Sections 28 and 34 of the Act towards deduction of tax at source on the basis of the circular issued by the State Government at Annexure "B" dated 4.9.2010.

3. Learned Counsel for the petitioners submits that having regard to Section 194LA of the Income Tax Act, 1961, the second respondent is not justified in deducting the tax at source from the interest accrued on delayed payment of compensation. The circular at Annexure "B" is violative of Section 194LA of the Income Tax Act,

4. On the other hand, Learned AGA appearing for respondent Nos. 1 and 2 submits that the second respondent has deducted 10% of the interest awarded under Sections 28 and 34 of the Act as per the circular at Annexure "B" dated 4.9.2010.

5. Learned Counsel appearing for the revenue contends that the interest awarded under Sections 28 and 34 of the Act is a revenue receipt eligible to tax. u/s 194LA, no deduction of tax is permissible where the acquired property is an agricultural land. There is no bar for deducting 10% of interest towards tax at source.

6. The Finance (No. 2) Act, 2004 inserted Section 194LA w.e.f. 1.10.2004, which is as under:

194 LA: Payment of compensation on acquisition of certain immovable property: Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten percent of such sum as income tax thereon:

Provided that no deduction shall be made under this Section where the amount of such payment or, as the case may be, the aggregate amount of such payment to a resident during the financial year does not exceed two hundred thousand rupees.

Explanation: For the purposes of this Section,-

(i) "agricultural land" means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of Section 2;

(ii) "immovable property" means any land (other than agricultural land) or any building or part of a building.

7. Perusal of the above provision would indicate that deduction of tax at source is required to be made in respect of compensation paid for acquisition of immovable property other than agricultural land.

8. Section 28 empowers the Court to award interest on the excess amount of compensation over the amount awarded by the Deputy Commissioner. Section 34 provides for payment of interest if the compensation is not deposited before taking possession of the land. These provisions make a distinction between the amount awarded as compensation and interest payable on the amount so awarded. Perusal of the different provisions of the Land Acquisition Act would disclose that after the statutory notifications are issued and the requisite notice is given to the persons interested in the lands acquired, the Deputy Commissioner, after holding necessary enquiry makes an award *inter alia* determining the amount of compensation payable for the lands acquired. Section 15 of the Act says that in determining the amount of compensation, the Deputy Commissioner shall be guided by the provisions contained in Sections 23 and 24, Section 23 provides for matters to be considered in determining compensation and Section 24 describes the matters to be neglected in determining the compensation. A perusal of Section 23 shows that interest is not an item included in the compensation for any of the matters mentioned therein nor is it mentioned as the consideration for acquisition of the land. Thus, the Act itself makes a clear distinction between the compensation payable for the land acquired and the interest payable on the compensation awarded.

9. The "interest" in the context means, a consideration paid either for use of money or for forbearance in demanding it, after it has fallen due. It is a compensation allowed by law or fixed by parties or permitted by custom or usage for use of money, belonging to another or for the delay in paying the money after it has become payable.

10. The Apex Court in *Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab*, has held that interest, whether it is statutory or contractual, represents the profit the creditor might have made if he had the use of the money or the loss he suffered because he had not that use. It is something in addition to the capital amount, though it arises out of it. The Scheme of the Act and the express provisions thereof establish that the statutory interest payable u/s 34 is not compensation paid to the owner for depriving him of his right to possession of the land acquired, but that given to him for the land acquired. In a case where title of the land passes to the State, the statutory interest provided thereafter can only be regarded either as representing the profit which the owner of the land might have made if he had the use of the money or the loss he suffered because he had not that use. Therefore, the statutory interest paid u/s 34 of the Act is interest paid for the delayed payment of compensation amount and therefore, is a revenue receipt liable to tax under the Income Tax Act.

11. In *Bikram Singh and Others Vs. Land Acquisition Collector and Others*, the Apex Court has again held that interest received on delayed payment of compensation under the Land Acquisition Act is a revenue receipt eligible to Income Tax.

12. In the instant case, admittedly, the immovable property acquired was

agricultural land. In the circular at Annexure "B" dated 4.9.2010, the State Government has clarified that tax has to be deducted at source in respect of the interest awarded under Sections 28 and 34 of the Act on the compensation for acquiring the agricultural lands though deduction of tax at source shall not be made in respect of compensation paid for acquisition of agricultural land. As has been noticed above, interest is not an item of compensation nor is it a consideration for acquisition of land. Interest u/s 28 is statutorily paid for the delayed payment of compensation amount. It is a revenue receipt. The amount received as interest on the amount of compensation assessed under the Land Acquisition Act is taxable under the Income Tax Act. The bar contained in Section 194LA for deducting the tax at source is only in respect of the compensation determined for acquiring the agricultural lands. The said bar is not applicable in so far as interest is concerned. Therefore, I do not find any error in the circular at Annexure "B" dated 4.9.2010. In my opinion, the second respondent has rightly deducted 10% of the interest amount towards deduction of tax at source. There is no merit in the writ petitions. They are accordingly dismissed. No costs.