(2009) 08 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Karnail Singh	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 16, 17, 194A, 2, 3
Land Acquisition Act, 1894 — Section 18, 28, 31, 34, 4

Citation : (2009) 227 CTR 260 : (2009) 156 PLR 423 : (2009) 4 RCR(Civil) 564 : (2009) 184 TAXMAN 257

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution challenges notice dated 4-9-2008 (P-3) issued by the Sub-Divisional Officer, Sirsa, calling upon the petitioner to deposit a sum of Rs. 4,023 being Tax Deducted at Source (TDS). The demand for TDS has been raised on account of interest for enhanced amount of compensation in respect of acquired agricultural land belonging to the predecessor-in-interest of the petitioner. As substantive question of law is involved, we are not influenced by the paltry sum which is sought to be recovered as TDS.

2. Brief facts of the case are that Shri Kartar Singh, father of the petitioner was owner of land situated in village Ottu, Tehsil Rania, District Sirsa. On 9-5-2000 the said land was acquired u/s 4 of the Land Acquisition Act, 1894 (for brevity, ''the 1894 Act'') for construction of Darba Ghaggar Drain. On 15-10-2001, award was passed by the Land Acquisition Collector. The father of the petitioner preferred reference u/s 18 of the 1894 Act for enhancement of compensation (Reference No. 918LA of 2004) in the Court of learned Additional District Judge, Sirsa. The said reference was consolidated with other land references, which were decided vide award dated 14-6-2007 (P-2). The land reference was eventually allowed partly vide short order dated 11-3-2008. A sum of Rs.

5,61,000 per acre was awarded as compensation for nehri land (P-l). On 14-6-2007, the petitioner received the compensation being the legal heir of Shri Kartar Singh. On 4-9-2008, respondent No. 3 issued a notice to the petitioner raising the demand of Rs. 4,023 on account of TDS on the amount of interest of compensation received by the petitioner (P-3).

3. The petitioner has filed the instant petition with the grievance that as per Section 194LA of the Income Tax Act, 1961 (for brevity, ''the Act'') payment of compensation or enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition of agricultural land could not be subjected to deduction of an amount equal to 10 per cent of such sum as Income Tax. It is claimed that the land belonging to the petitioner is covered by the expression ''agricultural land'' as defined in the Explanation.

4. In the written statement filed on behalf of the respondents the factual position has not been disputed. It has, however, been asserted that the demand has rightly been raised. It has been pointed out that due to inadvertent mistake of the concerned official the omission had occurred which was highlighted by the Audit Department Haryana vide their letter dated 4-7-2008. Accordingly, the impugned notice was issued to the petitioner asking him to deposit the amount of TDS. It has further been urged that the instant petition is premature as the petitioner failed to give any reply to the impugned notice dated 4-9-2008. The respondents have also placed reliance on Section 194A of the Act which prescribes that any person who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, was obliged to deduct Income Tax at the rates in force at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode.

5. However, when the matter came up for consideration of this Court on 11-5-2009, the Division Bench observed that the respondents have not considered the factual aspect whether the land in the instant case has been considered as ''agricultural land'' or ''non-agricultural'' because Section 194A of the Act would have no application on ''agricultural land''. The respondents were directed to file a specific affidavit in that regard, which was filed. In para 2 of the affidavit dated 20-5-2009, it has been stated that the land in question was acquired by the State of Haryana for a public purpose and as per the detail given in the award as well as the revenue record, the land in question was ''agricultural land''. However, in para 4 of the affidavit submission has been made that Section 194A of the Act is applicable on the interest income of the petitioner because the same has been received by the petitioner as ''income on account of interest'' on which TDS is required to be paid.

6. We have heard learned Counsel for the parties and have also perused the paper book along with relevant statutory provisions. In order to put the whole controversy in its proper prospective it would first be necessary to read Section 194LA of the Act, which postulates the payment of TDS when amount of

compensation on acquisition of certain immovable property is made. Section 194LA of the Act reads thus:

194LA. 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 earlier, deduct an amount equal to ten per cent 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 payments to a resident during the financial year does not exceed one hundred thousand rupees.

Explanation.--For the purpose 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 (Hi) 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. It is obvious that agricultural land is excluded from the scope of Section 194LA of the Act. The expression ''agricultural land'' is further explained in its definition given in Section 2(14)(iii)(a) and (b) of the Act. In order to appreciate the meaning of ''agricultural land'' it would also be profitable to read Sub-clause (iii), Clause (14) in Section 2 of the Act, which reads thus:

2. Definitions.-In this Act, unless the context otherwise requires,:

(1) to (13) ** ** **

(14) ''capital asset'' means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include:

(i) and (ii) ** ** **

(iii) agricultural land in India, not being land situate:

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

(b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;

8. In pursuance of powers conferred by item (B) of Clause (ii) of the proviso to Sub-clause (c) of Clause (1A), and item (b) of Sub-clause (iii) of Clause (14) of Section 2 of the Act, the Central Government has issued Notification No. 9447 [F. No. 164/3/87-IT(A-I], dated 6-1-1994, after following procedure. The notification includes the land belonging to the petitioner and it has to be treated as ''agricultural land''. It is worthwhile to read the notification, which is as under:

7. Vicinity of urban areas notified under proviso (ii)(B) to Sub-clause (c) of Clause (\\A) for the purposes of exemption of income from agricultural house property.-Whereas a draft notification was published by the Central Government in exercise of the powers conferred by item (B) of Clause (ii) of the proviso to Sub-clause (c) of Clause (1A), and item (b) of Sub-clause (iii) of Clause (14) of Section 2 of the Income Tax Act, 1961 (43 of 1961), in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 13-2-1991 under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. S.0.91(E), dated 8-2-1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public;

And whereas copies of the said Gazette were made available to the public on 13-2-1991;

And whereas the objections and suggestions received from the public on the said draft notification have been considered by the Central Government;

Now, therefore, in exercise of the powers conferred by item (B) of Clause (ii) of the proviso to Sub-clause (c) of Clause (1A) and item (b) of Sub-clause (iii) of Clause (14) of Section 2 of the Income Tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.0.77(E), dated 6-2-1973, the Central Government having regard to the extent of and scope for urbanisation of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and, falling outside the local limits of Municipality or Cantonment Board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above-mentioned provision of the Income Tax Act, 1961 (43 of 1961).

SCHEDULE -- Sl. Name of the State Name of the Details of areas No. or Union Municipality or falling outside the Territory Cantonment local limits of Board falling in Municipality or the State/Union Cantonment Territory Board, etc., mentioned under mentioned under column (2) column (3) -- (1) (2) (3) (4) -- 1. to ** ** ** 54. -- 55. Sirsa Areas up to a distance of 5 kms. from the municipal limits in all directions. --

This notification shall have effect on and from the date of its publication in the Official Gazette.

Explanations.-(1) In this notification, "Municipality" shall mean any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, Notified Area Committee, Town Area Committee, Town Committee or by any other name), which has population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

(2) The reference to municipal limits or the limit of Cantonment Board in the Schedule to this notification is to the limits as existing on the date on which the notification is published in the Official Gazette.

Notification: No. 9447 [F. No. 164/3/87-IT(A-I)], dated 6-1-1994.

It is, therefore, evident that the land in question is ''agricultural land'' and it is excluded from the operation of Section 194LA of the Act.

9. The aforesaid finding that the land in question is ''agricultural land'' is further supported by categorical admission made by the respondent State in its affidavit dated 20-5-2009. However, the following question would arise for determination of this Court:

Whether the interest accrued on the delayed payment of enhanced amount of compensation would partake the character of compensation taken from ''agricultural land'' and, therefore, is assessable to deduction of TDS?

10. The answer to the aforesaid question would depend upon as to whether interest is regarded as revenue receipt attracting the charging section of the Act or it could be described as damages or compensation in lieu of the owner''s right to retain possession. The controversy had erupted before Hon''ble the Supreme Court in the case of Dr. Shamlal Narula Vs. Commissioner of Income Tax, Punjab, . The Supreme Court after considering the concept of interest laid down by the Privy Council and many other judgments has held as under:

...In a case where the title 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. In no sense of the term can it be described as damages or compensation for the owner''s right to retain possession, for he has no right to retain possession after possession was taken u/

s 16 or Section 17 of the Act. We, therefore, hold that the statutory interest paid u/s 34 of the Act is interest paid for the delayed payment of the compensation amount and, therefore, is a revenue receipt liable to tax under the Income Tax Act....

11. The aforesaid proposition of law has been consistently reiterated by Hon''ble the Supreme Court in later judgments including the cases of T.N.K. Govindarajulu Chetty Vs. Commissioner of Income Tax, Madras, and K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh, . Accordingly it has been accepted to be settled law that interest received on delayed payment of compensation is revenue receipt exigible to Income Tax.

12. The issue came up before Hon''ble the Supreme Court in the case of Bikram Singh and Others Vs. Land Acquisition Collector and Others, . After referring to various judgments of Hon''ble the Supreme Court it was concluded that interest on delayed payment on the acquisition of immovable property would be revenue receipt and would thus be exigible to tax. The view of Hon''ble the Supreme Court is discernible from the perusal of para 10 of the judgment which reads thus:

10. But the question is : whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be exigible to income tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of ''interest'' was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined u/s 28 or 31 of the Acquisition Act is a taxable event. Therefore, we hold that it is a revenue receipt exigible to tax u/s 4 of the Income Tax Act. Section 194A of the Act has no application for the purpose of this case as it encompasses deduction of the income at the source. However, the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year.

13. Once interest is regarded as revenue receipt then it would fall within the mischief of Section 4 of the Act which is a charging section. Therefore, it follows that TDS u/s 194A of the Act is to be paid by the petitioner in respect of the interest income on the delayed payment.

14. The argument of the counsel for the petitioner that interest income would partake the character of the enhanced amount of compensation which is agricultural income has to be answered in the negative and against the assessee.

15. As a sequel to the aforesaid discussion, the instant petition fails and the

same is dismissed.

