(2015) 09 KL CK 0073

In the High Court Of Kerala

Case No : WP(C) No. 21478 of 2015 (H)

Kochi Metro Rail Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Income Tax Act, 1961 — Section 194LA, 195, 206C
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 96

Citation : (2015) 09 KL CK 0073

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : V.M. Kurian, Mathew B. Kurian, K.T. Thomas and Isac T. Paul, Advocates, for the Appellant; N. Nagaresh, Assistant Solicitor General, for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a company, incorporated under the Companies Act, which has been constituted with the objective of building a metro rail system for the city of Kochi. The grievance of the petitioner in the writ petition is with regard to its liability to deduct tax at source from payments of compensation amounts to the persons from whom land was acquired in connection with the project. It is the case of the petitioner that, as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the "2013 Act"), and in particular Section 96 therein, there is an exemption envisaged from income tax in respect of amounts by way of compensation received by landowners. It is his contention therefore, that in the light of the said provision under the 2013 Act, the provisions of the Income Tax Act, that govern deduction of tax at source, from payments made to the persons from whom land was acquired, will have to be read down so as to exempt the petitioner from deducting any tax at source from compensation amounts paid to such persons. The petitioner would place reliance on the decision of the Hon''ble High Court of

Karnataka, in Hyderabad Industries Ltd. Vs. Income Tax Officer and another, , where the provisions of Section 195 of the Income Tax Act were held as not requiring a person to deduct tax at source in respect of income that was exempt from taxation under the Income Tax Act. He would also place reliance on the decision of the Hon''ble High Court of Gauhati in Sing Killing Vs. Income Tax Officer and Others, which was rendered in the context of Section 206C of the Income Tax Act. In the said decision, it was clarified, in the context of Section 206C of the Act that, if the income itself is exempted, any deduction/collection on account of Income Tax at source, would be beyond the powers conferred by the provisions of the Act. It is on the basis of the aforesaid contentions that the petitioner would pray for a declaration that, the benefit of exemption from income tax provided under Section 96 of the 2013 Act would be available to compensation amounts paid by the petitioner in connection with land acquisition for the Kochi Metro Rail Project.

2. A counter affidavit has been filed by the 4th respondent, wherein the averments in the writ petition are denied. It is also stated, relying on the decision of this Court in 2008 (4) KLT 782 that in cases where there is no compulsory acquisition of land under the Land Acquisition Act, 1894, even if the provision of Section 194LA are not applicable, the provisions of Section 194IA of the Income Tax Act would apply to govern deduction of tax at source from payments made to the persons from whom lands were acquired. It is the case of the respondents that, in the instant case there was no acquisition in terms of the Land Acquisition Act and therefore, Section 96 of the 2013 Act, on which the petitioner places reliance may not strictly apply.

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the 4th respondent.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the provisions under the Income Tax Act, that govern tax deduction at source in connection with payment of amounts as compensation for acquisition of land, is governed either by the provisions Section 194LA or in other cases by Section 194IA. In both these provisions, the liability to deduct tax at source is on any person responsible for paying any sum by way of consideration/compensation to another, in connection with acquisition/ transfer of immovable property. It is significant to note that, in neither of these provisions is the mandate of deduction of tax at source qualified by the requirement that the amount paid by way of compensation/consideration should constitute an income of the recipient under the Income Tax Act. I am therefore, not impressed with the submission of counsel for the petitioner that the provisions of Section 96 of the 2013 Act would come to his aid in exempting him from the requirement of deducting tax at source from compensation/ consideration amounts paid to persons, from whom immovable property was either acquired or obtained through negotiated purchase. The petitioner, as a person responsible for making payments, contemplated under either Section

194IA or under Section 194LA of the Income Tax Act, would be obliged to deduct tax at source in accordance with the said provisions under the Income Tax Act. The decisions relied upon by the petitioner, as noticed above, were rendered in the context of provisions which were not similarly worded as Section 194LA / Section 194IA, and hence cannot come to the aid of the petitioner in this writ petition. The availability of the benefit of any provision exempting compensation amounts from the levy of Income Tax, is a matter that will have to be considered in the individual assessments of the recipients of the said amounts. The same cannot have a bearing on the liability of the petitioner to deduct tax at source while making the payments so long as the provisions of S. 194LA and S.194 IA do not contemplate an exemption to the petitioner from discharging his obligation to deduct tax at source. The upshot of the above discussion is that the prayers sought for in the writ petition cannot be granted. The writ petition, therefore, fails and is accordingly dismissed.

