(1999) 01 KL CK 0051

In the High Court Of Kerala

Case No : O.P. No. 13822 of 1994-U

M. Kumaran and Others — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18

Citation : (1999) 2 ILR (Ker) 496 : (1999) 239 ITR 848

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : O. Ramachandran Nambiar, for the Appellant; P.K. Santhamma, Government Pleader, for the Respondent

Judgement

J.B. Koshy, J.—The main question to be decided in this case is whether the Land Acquisition Officer can deduct Income Tax at source, from the interest payable on the enhanced compensation on a reference u/s 18 of the Land Acquisition Act. While depositing enhanced compensation with interest on the basis of the decree in L. A. R. No. 29 of 1988 of the Sub-Court, Palakkad, Income Tax was deducted at source on the interest, by exhibits P-1 and P-2. The petitioners question the same and it is contended that no deduction of Income Tax can be made as the entire amount as per the decree should be deposited by the Land Acquisition Officer. It is further contended that the entire amount is a decree debt and as such there is no interest on any income and the decree is for the compensation amount on account of the property acquired by the respondents and, therefore, no Income Tax can be deducted.

2. Heard the learned Government Pleader.

3. First of all I note that the Income Tax Department or the Union of India is not made a party in the proceedings and as such the original petition itself is not maintainable. The questions whether the interest payable on the enhanced amount as per the land acquisition decree is liable for payment of Income Tax

and whether Income Tax deduction should be made were considered by various courts. The Supreme Court in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, , held that the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act awarded by a court on a reference u/s 18 of the Land Acquisition Act or on further appeal is liable for payment of Income Tax and Section 194A of the Act empowers the person who is responsible for making the payment to deduct Income Tax. The Supreme Court also held in the above case that the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act awarded by the court has to be taken to have accrued not on the date of the order of the court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order and such interest cannot be assessed to Income Tax in one lump sum in the year in which the order is made.

4. Counsel for the petitioners cited the decision of the Punjab and Haryana High Court in Baldeep Singh Vs. Union of India (UOI) and Another, In the above case the question for consideration was whether the executing court is liable to deduct Income Tax at source on the interest awarded on enhanced compensation. It was held that executing court is not the person responsible for payment of interest and, therefore, the court has no obligation to deduct tax at source. Here the tax was deducted not by the court. The direction of the Income Tax Department was given to the Land Acquisition Officer to deduct tax at source on such interest. The Supreme Court has considered the matter in Lt. Col. K.D. Gupta Vs. Union of India (UOI) and Others, . The contention that since the entire decree amount is inclusive of the interest amount, the Land Acquisition Officer is bound to deposit the entire amount in the court and cannot deduct the tax, was not accepted by the court, and held that since it is the obligation of the Land Acquisition Officer to deduct Income Tax at source, deducting Income Tax at source and withholding that amount from the decree amount is not in violation of the court decree. The Land Acquisition Officer is the person responsible for payment of interest and compensation.

5. Counsel for the petitioners cited the decision of the Andhra Pradesh High Court in Special Tahsildar and Land Acquisition Officer Vs. Dandu Saraswatamma and Others, . In that case also it is held that where land is compulsorily acquired under the Land Acquisition Act, 1894, and on a reference u/s 18 of the Act, enhanced compensation is awarded by the court, from the interest payable to the claimants tax can be deducted. But one circular of the Central Board of Direct Taxes providing for deduction of tax from such interest at the rate in force in that financial year alone was set aside, in view of the decision of the Supreme Court in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, . In Tuhi Ram Vs. Land Acquisition Collector and Another, it was held by a Division Bench of the Punjab and Haryana High Court that tax is deductible at source on the interest on compensation on compulsory acquisition of land. But the income by way of interest so received as above has to be spread

over all the years for the purpose of assessment to Income Tax from the time it became due.

6. The petitioners have no case that they have filed a statement or affidavit as required u/s 194A(1), proviso, at the relevant time for not deducting Income Tax. At present u/s 197(1A) one can submit a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the person responsible for payment for not deducting tax considering their total income. As already stated, the Income Tax authorities were not made parties in the original petition. Exhibits P-1 and P-2 also show that the amount was already remitted to the Income Tax Department. Therefore, the prayer for direction to the second respondent to deposit the above amount to the Sub-Court, Palakkad, cannot be granted. If the petitioners feel that they are not liable to pay Income Tax considering their total income for the relevant years, especially in the light of the Supreme Court decision in Lt. Col. K.D. Gupta Vs. Union of India (UOI) and Others, , it is for them to make an application for Refund to the Income Tax Department, or to use the Income Tax deduction certificate according to law.

7. There is no merit in the original petition and it is dismissed.

