

(2006) 08 KL CK 0052
In the High Court Of Kerala
Case No : C.R.P. No. 187 of 2006

Nalini

APPELLANT

Vs

Deputy Collector

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Income Tax Act, 1961 — Section 139A, 192, 193, 194, 195
Income Tax Rules, 1962 — Rule 30, 30(1), 31
Land Acquisition Act, 1894 — Section 9

Citation : (2007) 213 CTR 601 : (2006) 4 ILR (Ker) 229 : (2007) 294 ITR 423 : (2006) 4 KarLJ 87

Hon'ble Judges : K. Padmanabhan Nair, J

Bench : Single Bench

Advocate : Thiyyannoor Ramakrishnan, Arun Kumar P. and C. Chandrasekharan, for the Appellant; P.K. Raveendranatha Menon George K. George and Mohan C. Menon, Sr. Government Pleader, for the Respondent

Judgement

K. Padmanabhan Nair, J.—The decree holder in E.P. No. 493 of 1999 in L.A.R. No. 19 of 1994 on the file of the II Additional Subordinate Judge's Court, Thrissur is the revision petitioner. The property owned by the petitioner was acquired for a public purpose. The petitioner claimed additional compensation. The matter was referred to the Land Acquisition Court. The Land Acquisition Court enhanced the compensation awarded by the Land Acquisition Officer. The petitioner filed E.P. No. 493 of 1999 for realisation of the amount decreed. The requisitioning authority directly deposited an amount of Rs. 3,10,015/- on 16-08-2004, without deducting the income tax due from the total amount of compensation. Petitioner filed a cheque application and a cheque for Rs. 2,87,617/- was issued after deducting the amount of Rs. 22,398/- towards income tax. The Land Acquisition Officer filed an application to issue a cheque for Rs. 22,398/- for depositing the same as income tax. The petitioner objected to the application of the Land Acquisition Officer contending that the property acquired was agricultural land and that he is not liable to pay income tax from the amount of compensation

awarded. The executing court overruled the objection raised by the petitioner. It was held that a statutory duty is cast upon the Land Acquisition Officer to deduct income tax at source. The executing court relied on a decision reported in *State of Kerala v. Mariyumma* 2005 (1) KLT 587 and ordered a cheque for Rs. 22,398/- to the Land Acquisition Officer to be deposited as income tax and also directed the Land Acquisition Officer to issue a Tax Deduction Certificate. Challenging that order, this Civil Revision Petition is filed.

2. Since the question arising for consideration in this C.R.P is deduction of income tax at source, notice was issued to Senior Standing Counsel for the Income Tax Department. The C.R.P. is disposed of after hearing Sri Thiyyannoor Ramakrishnan, counsel for the petitioner, Sri Mohan C. Menon, Senior Government Pleader and Mr. George K. George, Standing Counsel for the Income Tax Department.

3. Learned Counsel appearing for the petitioner has argued that in *Mariyumma's* Case (*supra*) this Court has held that if the land acquired is agricultural land, the owner has no liability to pay income tax and hence the court below went wrong in deducting the income tax. It is argued that the nature of the land involved in this case will show that the land acquired in this case was agricultural land.

4. Section 194A of the Income Tax Act deals with the liability to pay income tax on interest awarded provided the amount of interest exceeds Rs. 5,000/-. So for any interest payable on enhanced compensation, solatium and other interest, a statutory liability is cast upon the Land Acquisition Officer to deduct income tax at source provided the amount of interest is more than Rs. 5,000/-. Learned Counsel appearing for the petitioner has argued that the interest accrued in this case is not for a single year but for a number of years and if the interest is appropriated for each year, the interest accrued for each year will not exceed Rs. 5,000/- and he would not be liable to pay any income tax. The authority competent to consider the benefit claimed by the petitioner is the Income Tax Officer.

5. Section 194LA casts a statutory liability on the Land Acquisition Officer to deduct income tax at source if the amount of compensation is paid after 1-10-2004 and the same exceeds one hundred thousand rupees. It is contended that the liability to deduct income tax u/s 194LA arises only if the land acquired is not agricultural land. It is true that Section 194LA excludes agricultural land. Explanation to Section 194LA provides that "agricultural land" means agricultural land in India as referred to in items (a) and (b) of sub Clause (iii) of Clause (14) of Section 2. Section 2(14) deals with capital asset. Section 2(14)(iii) (a) and (b) read as follows:

(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 kilometres, 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, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette.

Whether a particular land is an agricultural land or not is to be determined with reference to the definition given in Section 2(14)(iii)(a) and (b) of the Income Tax Act and not with reference to the tenure of the land shown in the land revenue records. A combined reading of Section 194LA and the definition of agricultural land given u/s 2(14)(iii)(a) and (b) makes it abundantly clear that the competent authority to decide whether any compensation awarded is exigible to income tax is the Income tax officer. So it is clear that the remedy available to the party is either to approach the competent authority u/s 197 of the Income Tax Act or pay the income tax and get it refunded.

6. The learned Counsel appearing for the petitioner has argued that at present there is no practice of giving notice to the party regarding his liability to pay income tax from the amount of compensation awarded by the Land Acquisition Officer. It is argued that the parties are not even aware of any such deduction and there is no practice of issuing Tax Deduction Certificate by the Land Acquisition Officer under the relevant rules. It is argued that even when the enhanced compensation is awarded by the court the parties are not informed about the quantum of income tax deducted and also no certificate is issued. It is not disputed by the learned Senior Government Pleader that at present no notice is issued by the Land Acquisition Officer to the claimant informing him about the liability to pay income tax, I am of the view that it is only just and proper that the parties are given advance notice regarding the liability to pay Income Tax. The Land Acquisition Officer can note this fact also, in the notice issued to the claimant u/s 9 of the Land Acquisition Act. The claimant shall be informed about this fact during award enquiry stage. In the award, the income tax deducted shall be separately shown.

7. If the claimants are told about their liability to pay income tax before deducting the same they will have an option to get a certificate of exemption from payment of tax reduced rate of tax, etc. from the competent Officer u/s 197 of the Income Tax Act. So, it is only just and proper that the State Government issues necessary directions to the Land Acquisition Officer to give notice regarding the liability of the claimants to pay income tax even before passing of the award.

8. Shri George K. George, learned standing counsel appearing for the Income Tax Department submitted that with effect from 1.10.2004 any person, who is

responsible for paying to a resident, any sum, being in the nature of compensation or the enhanced compensation or consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force of any immovable property is liable to pay income tax if the amount of payment exceeds Rupees One Lakh. It is also submitted that interest of any nature if it exceeds Rs. 5,000/- the Officer is bound to deduct income tax. The proper time for deposit as per Section 192(1A) of the Income Tax read with Rule 30(1) of the Income Tax Rules the tax deducted shall be remitted to the account of the Central Government in any branch of RBI or SBI or any authorised bank in accordance with law within one week from the last day of the month in which the deduction is made. In case of deduction by or on behalf of the Government, tax is to be deposited on the same day without any chalan (book adjustment).

9. Section 203A of the Income Tax Act casts a duty to get a tax deductor's accounting number or tax collector's accounting number. It is submitted that every person deducting tax at source under Sections 192 to 196(d) shall obtain a Tax Deductor's Accounting Number or Tax Collector's Accounting Number (TAN for short). It is also pointed out that the time limit for submitting an application for obtaining TAN is within one month from the end of the month in which the tax was deducted and the application for TAN shall be made in Form 49B. It is also submitted that the application is to be submitted before the agencies authorised by the Government, i.e., NSDL along with the prescribed fees. It is further pointed out that NSDL has designated certain parties in various parts of India to act on their behalf for accepting these application forms. In Cochin the following are the approved centres:

1. Karvy Consultants Ltd., G-39, Panampilly Nagar, Cochin - 36,
2. Integrated Enterprises (India) Ltd., "Seema", 41/426. Rajaji Road, EKM.

It is submitted that a mandatory duty is cast on every deductor to apply for TAN within the specified time.

10. It is further submitted that the Finance Act 2004 amended Section 206 of the Income Tax Act, 1961 making it mandatory for the Government deductors to furnish each TDS returns from the financial year 2004-05. A statutory duty is cast upon the deductor to submit quarterly returns of TDS in respect of all payments other than salaries and payments to certain non-residents shall be filed in Form No. 26Q. It is also pointed out that if there is failure to deduct or pay tax the amount will carry interest at the rate of 12%. It is pointed out that the following are the penalties prescribed in case of failure.

Section	Nature	of	default	Penalty
Failure to deduct at source	the whole or any part of tax	Sum equal to the amount he failed to deduct		271C

----- 272B
Failure to comply with the pro- Rs. 10,000/- visions of Sections 139A for
quoting PAN

272BB Failure to apply for TAN Rs. 10,000/-

272A(2) Failure to file the return of Rs. 100 for every day TDS/Tax collected at
source during which the including quarterly statements failure continues but of
TDS/TCS the penalty shall not exceed the amount of tax deductible/collectible

272A(2) Failure to issue TDS certificates Rs. 100 for every day during which the
failure continues but the penalty shall not exceed the amount of tax
deductible

----- 220
Failure to deduct or pay Interest @ 12% on the tax at source amount of tax
from the date on which such tax was deductible to the date on which the tax
is actually paid.

It is submitted that the failure to pay tax deducted at source is an offence
punishable with rigorous imprisonment for a minimum period of three months
and maximum seven years. So, the Land Acquisition Officers who are liable to
deduct tax at source would follow the provisions of Income Tax Act strictly and
deposit the amount collected within one week from the last day of the month in
which the deduction is made.

11. Regarding the present practice of collecting tax Shri Mohan C. Menon,
learned Senior Government Pleader has submitted that at present the income tax
deducted are deposited to the Central Government Account by using treasury
chalans (in triplicate) presented to concerned treasuries under head of account
8658-00-112-IT. It is further submitted that one copy of the chalan is being
forwarded to the Accounts Officer of the Income Tax Department and details of
amount collected and furnished to the Accountant General, Kerala. It is further
submitted that intra Governmental settlement of the income tax amount are
done in between Accountant General, Kerala and concerned Central Government
Department. It is also submitted that one copy of the treasury chalan in each
and every remittances made under the Income Tax Act are being furnished to the
Income Tax Zonal Office by the Treasury Branches. The learned senior
Government Pleader has made available a circular issued by the Thrissur District
Collector to the Land Acquisition Officers working under him regarding the
procedure to be followed regarding deduction of tax at source.

12. It is submitted that in uncontested L.A.R. cases the award amounts are given
to the claimants by way of "D" form cheques after deducting income tax. It is
submitted that the amount of tax collected is deposited in the treasury and after
receiving back a copy of the treasury chalan for the remittance made, TDC is

issued by the concerned Land Acquisition Officer. It is further submitted that in L.A.R. cases a statement of account is prepared as per the judgment and decree of the concerned court and if tax is deductible the same will be calculated and deducted. It is submitted that the amount calculated as per the statement of account is deposited by "D" form cheque along with a treasury chalan for the amount to be deposited towards the income tax into the court through the Government Pleaders concerned. It is further submitted that the courts will forward the "D" form cheques along with the treasury chalan to the treasury for book adjustment. The Treasury will then account the income tax in the head of account 8658-00-112-TDS and forward a copy of the chalan thereof to the concerned Land Acquisition Officer. It is submitted that TDC will be issued by the Land Acquisition Officer to the claimant at their request. It is also submitted that after the decision reported in Mariyumma's case (supra) the income tax calculated is directly remitted to the treasury and the amount due to the claimant is remitted to the court by issuing "D" form cheque by the Land Acquisition Officer. It is further submitted that the particulars of remittance towards income tax are gathered and TDC is issued by the Land Acquisition Officer.

13. It is pointed out that in the case at hand the requisitioning authority was the Southern Railway and the entire compensation amount including the amount deductible as income tax was directly sent to the court by the requisitioning authority. So the Land Acquisition Officer had filed a cheque application towards the amount due to income tax and the court had issued a cheque. The amount transferred was credited to the income tax on 14.2.2006 and chalan receipt was produced before the court below.

14. The counsel for the petitioner submitted that though a statutory duty is cast upon the Land Acquisition Officer to issue TDC in practice no such certificate is issued by them. It is submitted that the claimants are not even told the fact that income tax is deducted from the compensation amount awarded to them. Section 203 of the Income Tax Act enjoins that the officer deducting that tax is bound to issue a certificate for tax deducted. Section 203(1) of the Income Tax Act reads as follows:

203 Certificate for tax deducted

(1) Every person deducting tax in accordance with the foregoing provisions of this Chapter shall, within such period as may be prescribed from the time of credit or payment of the sum, or, as the case may be, from the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

Rule 30 of the Income Tax Rules deals with time and mode of payment to

Government account of tax deducted at source. Rule 31 of the Income Tax Rules deals with certificate of tax deducted at source or tax paid under Sub-section (1A) of Section 192. Rule 31 of the Income Tax Rules reads as follows:

(1) The certificate of deduction of tax at source or, the certificate of payment of tax by the employer on behalf of the employee, u/s 203 to be furnished by any person deducting tax in accordance with the provisions of-

(a) ...

(b) Sections 193, 194, 194A, 194B, 194BB, 194C, 194D, 194E, 194EE, 194F, 194G, 194I, 194J, 194K, 194LA, 195, 196A, 196B, 196C and 196D shall be in Form No. 16A.

(2)...

(3) The certificate mentioned in Sub-rule (1) shall be furnished within a period of one month from the end of the month during which the credit has been given or the sums have been paid or, as the case may be, a cheque or warrant for payment of any dividend has been issued to a shareholder.

So Rule 31 of the Income Tax Rules enjoins that the claimants in land acquisition proceedings are entitled to get a tax deduction certificate in Form No. 16 A within one month from the end of month during which the credit has been given or the sums have been paid or as the case may be a cheque or warrant for payment. The Land Acquisition Officer shall issue tax deduction certificate within one month from the end of the month in which the amount was deposited. Section 272A(1) of the Income Tax Act provides for penalty for failure to issue tax deduction certificate. The penalty provided is Rs. 100/- for every day during which the failure continues but the same shall not exceed the amount of tax deducted. If there is delay in issuing Tax Deduction Certificate, the Land Acquisition Officer is liable to pay penalty also. It is advisable that the Land Acquisition Officers consult the Income Tax Officers in such matters and ascertain the rate of Income Tax to be deducted from the compensation and interest.

14. In the case at hand, the petitioner claims exemption from the liability to pay income tax on the ground that as per the revenue records, the land acquired was agricultural land. The Land Acquisition Court has no jurisdiction to decide that issue and that is a matter to be decided by the Income Tax Officer. So the order passed by the court below is correct. The remedy available to the petitioner is to get the TDC from the Land Acquisition Officer and claim refund from the Income Tax Officer.

In the result, the Civil Revision Petition is dismissed. There will be a direction to the Land Acquisition Officer to issue TDC to the petitioner in accordance with law as expeditiously as possible.

The Registry shall send a copy of this order forthwith to the Chief Secretary, for forwarding the same to the Land Acquisition Officers and District Collectors for

necessary action.