(2010) 01 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Risal Singh and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:
Income Tax Act, 1961 — Section 194LA
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2010) 321 ITR 251 : (2011) 3 RCR(Civil) 268

Hon'ble Judges : Alok Singh, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This petition seeks quashing of TDS certificates issued by the Land Acquisition Collector, Sonepat after deducting the tax at source u/s 194LA of the Income Tax Act, 1961 (for short, "the Act").

2. The case of the petitioners is that their agricultural land has been acquired in pursuance of notifications dated November 9, 1992, u/s 4 and November 6, 1993, u/s 6 of the Land Acquisition Act, 1894 and award in respect thereof was passed on November 5, 1995. While disbursing the compensation, the Collector illegally made deduction of tax at source and remitted the same to the Income Tax Department which is permissible only in the case of non-agricultural land.

3. In reply on behalf of the Income Tax Department, it has been stated that alternative remedy is available to the petitioners to seek refund after getting assessment done. The Collector was bound to make deduction and was, thus, justified in doing so.

4. The reply of the Collector is that deduction has been made on instructions of the Haryana Urban Development Authority (HUDA).

5. We have heard learned Counsel for the parties and perused the record.

6. The question for consideration is whether deduction is permissible out of the

compensation disbursed for acquisition of agricultural land. Section 194LA of the Act is as under:

194LA. 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 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.

7. A bare perusal of the above clearly shows 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. There is no jurisdiction to make deduction from compensation for agricultural land. In the absence of jurisdiction to deduct tax from compensation for agricultural land, the stand of the Income Tax Department that since there is remedy of getting the assessment done and to receive refund, the writ petition was not maintainable, cannot be accepted. The Collector could not have made deduction without determining the jurisdictional fact that compensation was for property other than agricultural land. Deduction of tax at source, without determining the plea of the petitioner that the land was agricultural land, was not justified. The amount is said to have been remitted to the Income Tax Department which is illegal.

8. Accordingly, we allow this petition and direct the Income Tax Department to refund the amount to the Collector within one month from the date of receipt of a copy of this order. Thereafter, the Collector will determine whether compensation paid is for property other than agricultural land or otherwise and whether deduction of tax at source was permissible under any provision of law. Whether deduction is permissible or not will be decided by the Collector within two months from the date of receipt of a copy of this order. If deduction is found not permissible, the amount will be refunded to the petitioners not later than three months from receipt of a copy of this order. It is made clear that this order will not affect the right of Income Tax Department to take such action as may be permissible under the law.

9. The petition is disposed of.

