(2015) 06 KAR CK 0168

In the Karnataka High Court

Case No : Writ Petition No. 57385/2013 (GM-ST/RN)

Shubhankar Estates Private Limited APPELLANT

Vs

The Senior Sub-Registrar Gandhinagar (Kacharakanahalli) and Others RESPONDENT

Date of Decision : 03-06-2015

Acts Referred:
Income Tax Act, 1961 — Section 194-IA, 194LA, 203A

Citation : (2016) 237 TAXMAN 731

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Paras Jain, for the Appellant; Shweta Krishnappa, HCGP, Advocates for the Respondent

Judgement

A.S. Bopanna, J.

1. The petitioner is before this Court assailing the endorsement dated 04.12.2013 impugned at Annexure-F to the petition. The petitioner is further seeking for issue of direction to respondent No. 1-Sub-Registrar to register the sale certificate issued by the second respondent without insisting upon the deposit of the TDS amount by the petitioner herein.

2. The instant petition has arisen in a circumstance where the provision in Section 194-IA is introduced to the Income Tax Act. The provision that has been introduced with effect from 01.06.2013 reads as hereunder:

"194IA: Payment on transfer of certain immovable property other than agricultural land

(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of cheque or draft or by

any other mode, whichever is earlier, deduct an amount equal to one percent of such sum as incometax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

(3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section."

3. The provision requires that the transferee is required to deduct 1% TDS amount from the sale consideration payable to the Transferor. On introduction of the said provision, the Income Tax Department has addressed communications to all the Sub-Registrars to see that the provision is given effect and in that regard, the communication dated 05.06.2013 addressed to the first respondent - Sub-Registrar is at Annexure-R.2 along with the objection statement filed on behalf of the first respondent. Since the first respondent Sub-Registrar is required to insist upon the payment of the TDS prior to registering any document and since in the instant case, the sale certificate as such was presented for registration on a day subsequent to 01.06.2013, the first respondent has issued the endorsement dated 04.12.2013 intimating the petitioner that the registration can be completed only on production of proof of deduction of TDS. In that view, the document presented for registration was kept pending in No. P 5068/2013-14 to the extent of the provision requiring such deduction of TDS and the first respondent requiring the transferees to produce such proof for deduction of TDS.

4. In a normal circumstance, there can be no cavil with regard to the insistence by the first respondent. However, what requires consideration in the instant case is as to whether in the facts evolving herein such insistence by the first respondent based on the communication dated 05.06.2013 (Annexure-R2) would be justified and as to whether the denial of registration of the document in favour of the petitioner could be sustained. To consider this aspect of the matter what requires to be noticed is that the petitioner is a successful bidder in the auction conducted by the second respondent to sell the property towards recovery of their debts. Pursuant to such sale being confirmed in favour of the petitioner, the payment of the entire sale consideration of Rs. 3,08,10,000/- was made by the petitioner to the second respondent - Bank on 03.03.2012 which would enure to the credit of the borrower who is the assessee. However, the sale certificate was executed by the Bank in favour of the petitioner only on 11.09.2013 which was thereafter presented for registration.

5. In that light, if the provision contained in Section 194-IA as extracted above is noticed, the obligation on the transferee to deduct 1% of the sale consideration towards TDS had come into effect only on 01.06.2013. If that be the position, as on 02.03.2012 when the petitioner in the instant case as the transferee had paid the amount to the transferor, there was no obligation in law on the petitioner to deduct the said amount. If this aspect of the matter is kept in view, even though the provision had come into force as on the date of presentation of the sale

certificate for registration, the petitioner having parted with the sale consideration much earlier, was not expected to deduct the amount and produce proof in that regard to the Sub-Registrar. It is no doubt true that in respect of the said amount the third respondent would have the right to recover the taxes due. But, in the instant case, the communication as addressed from the third respondent to the first respondent could not have been held against the petitioner in the circumstance stated above. In the peculiar circumstances of the instant case, where the petitioner being an auction purchaser had paid the entire sale consideration much earlier to the provision coming into force, the endorsement dated 04.12.2013 requiring the petitioner to deduct the income tax and indicating that the registration would be made thereafter cannot be sustained.

6. To the said extent the endorsement dated 04.12.2013 is quashed. A direction is issued to the first respondent to register the sale certificate which is kept pending in No. P 5068/2013-14 subject to all other compliances being made but without insisting upon deduction of TDS and release the document to the petitioner.

7. Notwithstanding the above direction, it is made clear that the registration of the sale certificate in favour of the petitioner and release of the document shall not take away the right of the third respondent and the assessee to require the second respondent to answer the third respondent as to whether the income derived through the said sale transaction has been assessed to tax and the taxes has already been paid to the third respondent. If the payment has not been made, it would be open to the third respondent to recover the same from the assessee concerned. It is made clear that the instant order is passed in the peculiar facts and circumstances arising in the instant case. The first respondent shall now act upon this order and the registration shall be completed within a period of four weeks from the date of furnishing a copy of this order, subject to all other compliances being made.

In terms of the above, the petition stands disposed of.