
(2013) 08 KL CK 0013
In the High Court Of Kerala
Case No : Writ Petition (C) No. 20572 of 2013

Thomas

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 23-08-2013

Acts Referred:

Citation : (2014) 264 CTR 437 : (2013) 3 ILR (Ker) 950 : (2013) 3 KHC 882 : (2013) 4 KLJ 331 : (2013) 3 KLT 941

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : M.M. Saidu Mohammed, for the Appellant; Jose Joseph, K. Jaju Babu and Government Pleader Sobha Annamma Eapen, for the Respondent

Final Decision : Partly Allowed

Judgement

V. Chitambaresh, J.—Is income tax liable to be deducted from the sale consideration at the time of transfer of an immovable property by a resident transferor? The issue crops up frequently in the wake of parcels of land being purchased in lieu of land acquisition for the prestigious Kochi Metro Rail Project. An extent of 1.61 Ares (3.98 cents) of land comprised in R.S. No. 78/2-1 of Aluva West Village in Aluva Municipality belonging to the petitioner is being transferred to the Government for the Kochi Metro Rail Project. A district level purchase committee constituted for the purpose has negotiated with the petitioner as regards the price of the property and a consideration at the rate of Rs. 17 lakhs percent is agreed upon. The petitioner has already produced the consent letter as well as the original documents including the title deeds, encumbrance certificate, tax receipt, possession certificate etc., to the Special Tahsildar (Land Acquisition) No. II The petitioner is apprehensive of deduction of income tax and has filed the Writ Petition for a direction to disburse the whole of the sale consideration without any deduction what so ever. Reliance is placed on Infopark Kerala Vs. Assistant Commissioner of Income Tax (TDS), to contend that such deduction is warranted only when there is a compulsory acquisition.

2. The respondents do concede that income tax is not liable to be deducted under S. 194IA of the Income Tax Act, 1961 ("the Act" for short) when the price is fixed by negotiation and not through land acquisition. But the respondents maintain that tax is liable to be deducted under S. 194IA of the Act effective from 1.6.2013 though not under S. 194IA of the Act. The respondents point out that the property agreed to be transferred is not an agricultural land and that the sale consideration exceeds Rs. 50 lakhs attracting the rigour of S. 194IA of the Act.

3. I heard Mr. M.M. Saidu Mohammed, Advocate on behalf of the petitioner, Mrs. Sobha Annamma Eapen, Government Pleader, Mr. K. Jaju Babu, Standing Counsel for the Kochi Metro Rail Corporation and Mr. Jose Joseph, Standing Counsel for the Income Tax Department.

4. Section 194IA of the Act is as follows:-

194 I.A. 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 194IA) 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 a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent of such sum as income tax 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.

Explanation:- For the purpose of this section, -

(a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.

5. Section 194IA of the Act has been introduced with effect from 1.6.2013 by the Finance Act, 2013 in order to have a mechanism for reporting of transactions in the real estate sector and to collect tax at the earliest point of time. It provides that every transferee at the time of making payment of or crediting any sum as consideration for transfer of immovable property to a resident transferor shall deduct tax. Such deduction at the rate of 1% of the sum as consideration will be applicable only if the property is not an agricultural land and the total sale consideration is Rs. 50 lakhs or more. The property in the instant case is admittedly situated within the limits of the Aluva Municipality and is not an

agricultural land going by Explanation (a) to S. 194IA of the Act aforequoted.

6. Explanation (a) to S. 194IA of the Act clarifies that "agricultural land" means agricultural land in India, not being a land situated in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of S. 2. S. 2(14)(iii)(a) & (b) can be profitably extracted hereunder:-

2(14) "capital asset" means property of any kind by an assessee, whether or not connected with his business or profession, but does not include -

(i) xxxxxxxx

(ii) xxxxxxxx

(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 are 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 kilometers, 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.

It is unnecessary to probe in to the nature of the property in order to decipher as to whether the same is an agricultural land or not in the context since it is admittedly situated within the limits of the Aluva Municipality. Such land situated within the jurisdiction of a Municipality or a Municipal Corporation is not to be treated as an "agricultural land" in terms of Explanation (a) to S. 194IA of the Act.

7. What survives for consideration is as to whether the total sale consideration agreed upon for the transfer of the property exceeds Rs. 50 lakhs in order to attract the rigour of S. 194IA of the Act. The petitioner concedes that he has agreed to receive sale consideration at the rate of Rs. 17 lakhs per cent and the total sale consideration for 3.98 cents comes to about Rs. 67,66,000/-. The petitioner is fully justified in his contention that tax is not liable to be deducted at the rate of 10% of the sum as consideration under S. 194IA of the Act since there is no land acquisition. But tax is certainly liable to be deducted from the sale consideration payable to the petitioner at 1% of the sum under S. 194IA of the Act since the total sale consideration exceeds Rs. 50 lakhs. The obligation to deduct tax under S. 194IA of the Act arises when consideration is payable to a resident transferor on the transfer of immovable property otherwise than by land acquisition. It is upto the petitioner to submit his return before the jurisdictional

assessing officer and take the proceedings to a logical end in the determination of his tax liability. The dictum in Infopark Kerala's case as affirmed in W.A. No. 2243 of 2008 is clearly distinguishable in as much as the same dealt with the deduction of tax under S. 194IA of the Act in the absence of a compulsory acquisition. The District Collector and the Special Tahsildar (Land Acquisition) are therefore directed to disburse the sale consideration to the petitioner after deducting income tax at 1% of the sum under S. 194IA of the Act.

The Writ Petition is allowed in part. No costs.