

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(THROUGH VIRTUAL MODE FROM SRINAGAR)

WP(C) No. 2058/2019

Pronounced on: 11.09.2025

Mohd. Sharief & ors.

.... Petitioner/Appellant(s)

Through:- Mr. RKS Thakur, Advocate

V/s

Union of India & ors.

.....Respondent(s)

Through:- Mr. Suraj Singh, Advocate for R2
Ms. Sagira Jaffar, assisting counsel
to Mrs. Monika Kohli, Sr. AAG for R3.

CORAM :

HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM JUDGE

JUDGMENT

PER : SINDHU SHARMA-J

01. The present writ petition has been preferred by the petitioners seeking a direction to the respondents to refund their respective 10% amounts which have been deducted as TDS from the compensation assessed by respondent No. 3 on account of damage caused to their respective houses due to the construction of the nearby tunnel, as income tax, details of which have been given in the statement along with interest at the rate of 18% per annum.

02. The brief facts giving rise to this petition are that the National Highway Authority of India started construction of four laning of National Highway in District Ramban. During the construction, some structures in the surrounding area were damaged due to blasting including the structures of the petitioners. The assessment of the damaged structures was

conducted by the PWD department and the assessed compensation was paid by the collectorate to the owners of the damaged structures after deducting TDS @ 10% from the total amount of compensation paid.

03. The petitioners submit that they are entitled to refund the 10% amount deducted by the respondents on the compensation paid to the petitioners on account of damages caused to their houses and structure due to the construction of tunnel on the National Highway. It is also submitted that no deduction of tax was permissible, as such, the same needs to be refunded to the petitioners. A legal notice in this regard was served upon respondent No.2 i.e., Income Tax Officer, Ward-2(4), Venus Chowk, Dhar Road, Udhampur, dated 07.09.2016 whereby refund of the said 10% amount which was deducted as TDS was sought.

04. The Collector Land Acquisition (Additional Deputy Commissioner), Ramban, (respondent No. 3) in his objections has stated that the compensation was paid by the Collectorate to the owners of the damaged structure including the petitioners after deducting TDS @ 10% and he had deposited an amount of TDS in the Government Treasury i.e., ₹14,93,900/- vide receipt No. 11/8658-I-Tax, dated 18.05.2012 which is reflected in the TRACES portal of the Income Tax Department (petitioners). It was also stated by

the respondents that the petitioners had to file the return under the provision of Income Tax Act for refund.

05. In the objections filed on 28.02.2023 by the Income Tax Officer, Ward-2(4), Venus Chowk, Dhar Road, Udhampur, i.e., respondent No. 2 wherein it is stated that 10% has been deducted as income tax on the amount of compensation received by the petitioners. However, in reply to this, it is stated that TDS (Tax Deducted at Source) payments are not made physically to the Income Tax Department, but instead ought to be made online through the Department's Tax Payment Portal. It is further stated that TDS returns are also required to be filed by the Deductor as per prescribe timelines. In this present case, it is submitted that respondent No. 3 has deposited the TDS with the Treasury and apparently, no Form 16-A has been issued to the petitioners by the Collector Land Acquisition, Ramban (respondent No.3 herein). It is not clear whether the deducted tax was subsequently uploaded to the Department of Tax Payment Portal, leading to the conclusion that there has been a lapse on the part of respondent No. 3 i.e., Collector Land Acquisition, Ramban, in proper payment of the TDS to the Income Tax Department and in filing of TDS return.

06. The petitioners, it is submitted, had not filed their Income Tax Return and in the absence of Income Tax Return for the relevant assessment year, there is no provision for the

department to issue refund to the petitioners. Further in such circumstances, it is stated that the only remedy available to the petitioners is to file application for condonation of delay in filing of Income Tax Return under section 119(2)(b) of the Income Tax Act, 1961 with the Principal Commissioner of Income Tax, Jammu and Kashmir, Jammu, who may consider the said application on merit.

07. The respondent No.3, in the supplementary affidavit filed on 19.07.2024, submitted that TDS @ 10% had been deducted as per provision of 194-LA of the Income Tax Act, 1961, the operative part of the section being relevant reads as under :-

“Payment of Compensation on acquisition of certain immovable property.

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 [five lakh] rupees:

Provided further that no deduction shall be made under this section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

Explanation.—For the purposes of this section,

- (i) “agricultural land” means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

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

08. It is further submitted that for refund, the petitioners have to file the return under the provisions of Income Tax Act. Respondent No. 2 on 05.08.2024 submitted Form 26AS downloaded from TRACES portal of the Income Tax Department which indicated transaction date as 31.05.2012, date of booking as 09.10.2014 and deduction under section-194C of the Income Tax Act, 1961.

09. After considering the submissions of the petitioners and the objections filed by the respondents, the respondents have not brought out any provision under the Income Tax Act which would require the petitioners' requirement to file their return of income under section 139 of the Income Tax Act, 1961. There are various instances under Section 139 of the Act, wherein a person is required to file return. All those circumstances and instances enumerated therein are not before the Court other than the objection that to claim refund of the TDS, the income tax return had to be filed and in absence thereof, it is not possible for this Court to arrive at a conclusion as to whether the petitioners are required to file return or not before the Income Tax Department.

10. The contention of the respondents is that TDS has been deducted under section 194 LA of the Income Tax Act, 1961 but as per Form 26AS, it has been shown to be

deducted under section 194 C. Further section 194 LA states that there has to be compulsory acquisition of immovable property whereas in the instant case, the petitioners continued to remain the owners of the property. The payment received was only in the nature of damages/compensation for injury to the properties, without any transfer of rights, title or interest in the immovable property. The very foundation for applicability of Section 194 LA is the existence of a transfer. Accordingly, in absence of a transfer of property by way of compulsory acquisition, Section 194 LA has no application. The deduction of TDS under this section on compensation for mere damages is, therefore, without authority of law.

11. The respondents have also not placed on record any material to show issuance of Form 16A (TDS Certificate) to the petitioners in time. As per requirement of the Income Tax Act, such certificate needs to be issued on a quarterly basis by the deductor after tax has been deducted and reported to the tax authorities. From the Form 26AS downloaded from TRACES portal of the Income Tax Department, it appears that the transaction date was 31.05.2012 and date of booking was 09.10.2014. Hence there is apparent delay in filing of the TDS return by the respondent and communication, if any, of deduction of tax with the petitioners by the respondent through issue of Form 16A has also not been explained.

12. The respondent No.2, Income Tax Officer, Ward-2(4), Venus Chowk, Dhar Road, Udhampur, in his objections has clearly stated that the only recourse available to the petitioners is to file application for condonation of delay in filing of Income Tax Return under section 119(2)(b) of the Income Tax Act, 1961 with the Principal Commissioner of Income Tax, Jammu and Kashmir, Jammu, who may consider the application on merit.

13. It would be appropriate to notice Section 237 of the Act which provides that if a person satisfies the Assessing Officer that the tax paid by him, or on his behalf, for any assessment year exceeds the amount properly chargeable under the Act for that year, he shall be entitled to a refund of the excess. Further, Section 239 stipulates that every claim for refund must be made in the prescribed manner within one year from the last day of the relevant assessment year.

14. It is also noticed that Instruction No. 13/2006, dated 22.12.2006, further prescribes the procedure for dealing with applications for condonation of delay in filing returns and claiming refunds. The Commissioners of Income-Tax (CsIT) is empowered to accept or reject applications under Section 119(2)(b) for condonation of delay in filing returns involving refund claims up to ₹10,00,000/-. The instruction further permits filing such applications within six years from the end of the relevant assessment year.

15. Since respondent No. 2 already stated in its objections that the petitioners may file an application for condonation of delay in filing the income-tax return under Section 119(2)(b) of the Act before the Principal Commissioner of Income-tax, Jammu and Kashmir, Jammu, who shall consider the application on merits.

16. In these circumstances, we are of the view that the appropriate course of action would be for the petitioners to file an application under Section 119(2)(b) of the Act seeking condonation of delay in filing the return and claiming the refund for the relevant assessment year. Since the refund pertains to Assessment Year 2013–14, and the six-year limitation period would ordinarily expire on 31.03.2020, the time during which the writ petition filed on 25.03.2019 remained pending is to be excluded while computing the limitation.

17. In view of the aforesaid facts and circumstances of the case, we are of the opinion that there are reasons due to which the application for condonation of delay in filing the Income Tax Return under Section 119(2)(b) of the Income Tax Act, 1961, should be made by the petitioners and accepted by the Principal Commissioner of Income Tax, Jammu & Kashmir, Jammu.

18. This petition is, accordingly, disposed of by granting the petitioners liberty to file the aforesaid application before

the Principal Commissioner of Income Tax, Jammu & Kashmir, Jammu, within eight weeks from the date of this order. The Principal Commissioner of Income Tax, Jammu & Kashmir, Jammu, shall consider the aforesaid application, ascertain the correctness of the claim of the petitioners by passing a speaking order on merits, regarding their claim for refund and interest in accordance with law, within a period of eight weeks from the date of filing of the application.

19. Disposed of accordingly.

SRINAGAR
RAM MURTI/PS
11.09.2025

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

