IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 21478 of 2015 (H)

PETITIONER:

KOCHI METRO RAIL LTD. ,
8TH FLOOR, REVENUE TOWER, PARK AVENUE,
ERNAKULAM, PIN - 682 011,
REPRESENTED BY ITS DIRECTOR (PROJECTS)
SHRI.MAHESH KUMAR.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.ISAC T.PAUL

RESPONDENT(S):
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1. UNION OF INDIA, NIRMAN BHAVAN,
   NEW DELHI, PIN - 110 011,
   RPERESENTED BY SECRETARY,
   MINISTRY OF URBAN DEVELOPMENT.

2. STATE OF KERALA, SECRETAIRAT,
   M.G.ROAD, THIRUVANANTHAPURAM - 695 001.

3. THE DISTRICT COLLECTOR, CIVIL STATION,
   KAKKANAD, ERNAKULAM DISTRICT - 682 030.

4. THE COMMISSIONER OF INCOME TAX,
   CENTRAL REVENUE BUILDING, I.S PRESS ROAD,
   ERNAKULAM - 682 018.

R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R2 & R3 BY GOVERNMENT PLEADER SRI.LIJU V.STEPHEN
R4 BY SRI.JOSE JOSEPH, SC,
BY ADV. SRI.CHRISTOPHER ABRAHAM
BY ADV. SRI.K.M.V.PANDALAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 21478 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:

P1 - **TRUE PHOTOCOPY OF THE MEMORANDUM OF UNDERSTANDING EXECUTED BETWEEN THE PEITIONER AND RESPONDENTS 1 AND 2 ON 04.11.13.**

P2 - **TRUE PHOTOCOPY OF THE GO(MS) NO. 35/2011/TRAN DT. 04.7.11 ISSUED BY THE 2ND RESPONDENT IN CONNECTION WITH CONSTITUTION OF THE LAND ACQUISITION UNIT.**

P3 - **TRUE PHOTOCOPY OF THE G.O(RT) NO. 621/13/RD DT. 04.2.13 ISSUED BY THE 2ND RESPONDENT IN CONNECTION WITH CONSTITUTION OF THE LAND ACQUISITION UNIT.**

P4 - **TRUE PHOTOCOPY OF GO(RT) NO. 1806/14/RD DT. 06.5.14 ISSUED BY THE 2ND RESPONDENT.**

P5 - **TRUE PHOTOCOPY OF THE GO(RT) NO. 2085/14/RD DT. 22.5.14 ISSUED BY THE 2ND RESPONDENT.**

P6 - **TRUE PHOTOCOPY OF THE CONSOLIDATED STATEMENT RELATING TO COMPENSATION FOR LAND ACQUISITION FOR THE KOCHI METRO RAIL PROJECT.**

P7 - **TRUE PHOTOCOPY OF THE AGREEMENT DT. 21.8.14 ENTERED INTO BETWEEN THE 2ND RESPONDENT ANDTHE LAND OWNER.**

P8 - **TRUE PHOTOCOPY OF THE LETTER DT. 05.6.15 ISSUED BY A LANDOWNER TO THE PETITIONER.**

P9 - **TRUE PHOTOCOPY OF THE LETTER DT. 05.6.15 ISSUED BY A LANDOWNER TO THE PETITIONER.**

P10 - **TRUE PHOTOCOPY OF THE LETTER DT. 06.6.15 ISSUED BY THE A LANDOWNER TO THE PETITIONER.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). No. 21478 of 2015
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Dated this the 9th day of September, 2015

JUDGMENT

The petitioner is a company, incorporated under the Companies Act, which has been constituted with the objective of building a metro rail system for the city of Kochi. The grievance of the petitioner in the writ petition is with regard to its liability to deduct tax at source from payments of compensation amounts to the persons from whom land was acquired in connection with the project. It is the case of the petitioner that, as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “2013 Act”), and in particular Section 96 therein, there is an exemption envisaged from income tax in respect of amounts by way of compensation received by landowners. It is his contention therefore, that in the light of the said provision under the 2013 Act, the provisions of the Income Tax Act, that govern deduction of tax at source, from payments made to the persons from whom land was acquired, will have to be read down so as to exempt the petitioner from deducting any tax at source from compensation amounts paid to such persons. The petitioner would place reliance on the decision of the Hon'ble High Court of Karnataka, in Hyderabad Industries Ltd. v. Income Tax Officer and another

[(1991) 95 CTR(Kar) 164], where the provisions of Section 195 of the Income Tax Act were held as not requiring a person to deduct tax at source in respect of income that was exempt from taxation under the Income Tax Act. He would also place reliance on the decision of the Hon'ble High Court of Gauhati in Sing Killing v. Income Tax Officer and Others **[(2002) 175 CTR (Gau) 668]** which was rendered in the context of Section 206C of the Income Tax Act. In the said decision, it was clarified, in the context of Section 206C of the Act that, if the income itself is exempted, any deduction/collection on account of Income Tax at source, would be beyond the powers conferred by the provisions of the Act. It is on the basis of the aforesaid contentions that the petitioner would pray for a declaration that, the benefit of exemption from income tax provided under Section 96 of the 2013 Act would be available to compensation amounts paid by the petitioner in connection with land acquisition for the Kochi Metro Rail Project.

2. A counter affidavit has been filed by the 4th respondent, wherein the averments in the writ petition are denied. It is also stated, relying on the decision of this Court in 2008 (4) KLT 782

that in cases where there is no compulsory acquisition of land under the Land Acquisition Act, 1894, even if the provision of Section 194LA are not applicable, the provisions of Section 194IA of the Income Tax Act would apply to govern deduction of tax at source from payments made to the persons from whom lands were acquired. It is the case of the respondents that, in the instant case there was no acquisition in terms of the Land Acquisition Act and therefore, Section 96 of the 2013 Act, on which the petitioner places reliance may not strictly apply.

3. I have heard the learned counsel appearing for the petitioner as also the learned Standing Counsel appearing for the 4th respondent.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the provisions under the Income Tax Act, that govern tax deduction at source in connection with payment of amounts as compensation for acquisition of land, is governed either by the provisions Section 194LA or in other cases by Section 194IA. In both these provisions, the liability to deduct tax at source is on any person responsible for paying any sum by way of consideration/compensation to another, in connection with acquisition/transfer of immovable property. It is significant to note that, in neither of these provisions is the mandate of deduction of tax at source qualified by the requirement that the amount paid by way of compensation/consideration should constitute an income of the recepient under the Income Tax Act. I am therefore, not impressed with the submission of counsel for the petitioner that the provisions of Section 96 of the 2013 Act would come to his aid in exempting him from the requirement of deducting tax at source from compensation/consideration amounts paid to persons, from whom immovable property was either acquired or obtained through negotiated purchase. The petitioner, as a person responsible for making payments, contemplated under either Section 194IA or under Section 194LA of the Income Tax Act, would be obliged to deduct tax at source in accordance with the said provisions under the Income Tax Act. The decisions relied upon by the petitioner, as noticed above, were rendered in the context of provisions which were not similarly worded as Section 194LA/Section 194IA, and hence cannot come to the aid of the petitioner in this writ petition. The availability of the benefit of any provision exempting compensation amounts from the levy of Income Tax, is a matter that will have to be considered in the individual assessments of the recepients of the said amounts. The same cannot have a bearing on the liability of the petitioner to deduct tax at source while making the payments so long as the provisions of S. 194 LA and S.194 IA do not contemplate an exemption to the petitioner from discharging his obligation to deduct tax at source. The upshot of the above discussion is that the prayers sought for in the writ petition cannot be granted. The writ petition, therefore, fails and is accordingly dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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