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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.868 of 2014
Date of decision: May 12, 2015

Ajit Singh and others

......Petitioners

Versus

Land Acquisition Collector and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. P.R. Yadav, Advocate for the petitioners.

Ms. Gaganpreet Kaur, AAG Haryana.

SABINA, J

Petitioners have filed this petition challenging the order dated 31.10.2013, whereby application moved by the petitioners for refund of Tax Deduction at Source ('TDS' for short) amount, was dismissed.

Learned counsel for the petitioners has submitted that admittedly, in the present case, agricultural land had been acquired. Hence, no tax could be deducted while making the payment of compensation by the competent authority. In support of his arguments, learned counsel has placed reliance on decision of this Court Annexure P-4 in Civil Revision No.7740 of 2012, decided on 18.07.2013, wherein it was held as under:

> *"The issue whether the interest which is paid on the compensation assessed by applying parameters under Section 23 of the Land Acquisition Act is not any longer res integra. There are two stands of views*

on the subject. In ***Rakesh Kumar & Ors. Vs. Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIDC) & Ors , CWP No. 14935 of 2011*** *decided on 17.8.2011, a Division Bench while addressing the issue of whether TDS would require to be deducted for compensation assessed, has observed in the course of judgment by citing its own earlier judgment passed in* ***Sarti Vs. HSIDC in CWP No. 9739 of 2011****. The Bench has observed thus:-*

> *"In the present case, the interest received by the petitioner was on account of delay in making the payment of enhanced compensation and, therefore, would fall under Section 28 of the 1894 Act. Such payment could not par-take the character of compensation for acquisition of agricultural land and, thus, was not exempt under the Act. Once that was so, the tax at source had been rightly deducted by the payer."*

Learned counsel for the petitioner would refer to judgment of Supreme Court in ***Commissioner of Income-tax Faridabad Vs. Bir Singh (HUF), Ballabgarh****. In C.W.P. No. 4401 of 2009, the Court has specifically dealt with the meaning of' consideration for enhanced compensation' as given in Section 194 LA in the context of interest mentioned under Section 28. Section 28 of the Land Acquisition Act captions the text of the provision as "Collector may be directed to pay interest on excess compensation" If the amount deposited is towards for liability under Section 28, and if it shall be taken only as interest for delay in payment, then in the* *manner interpreted by the Division Bench of this Court in* ***Sarti Vs. HSIDC*** *as latter approved in* ***Rakesh Kumar & Ors. Vs. HSIDC & Ors.****, Section 194 LA will not apply. Since the very same provision under Section 28 has been brought for consideration by Supreme Court in* ***CIT, Faridabad Vs. Gaushyam*** *in Civil Appeal No.4401 of 2009 decided on 16.7.2009 it has to be examined. The following observation is relevant:-*

> *"It is true that "interest" is not compensation. It is equally true that Section 194 LA of the 1961 Act refers to compensation. But as discussed hereinabove, we have to go by the provisions of the 1894 Act, which awards "interest" both as an accretion in the value of the lands acquired and interest for undue delay. Interest under Section28 unlike interest under Section 34 is an accretion to the value, hence it is a part of enhanced compensation or consideration which is not the case with interest under Section34 of the 1894 Act."*

It is clear from the observations of the Supreme Court that interest under Section 28 is, unlike under Section 34 of the 1894 Act, an accretion in value and regarded as part of the compensation itself which is not the case of interest under Section 34. With a clear statement of law obtaining through the Supreme Court. I would have no difficulty in saying that any component of compensation that goes towards the discharge of liability under Section 28 must be taken as part of the compensation to which Section 194 LA shall apply and that compensation being the value of *agricultural land, then the exclusion as provided under the Section shall also be attracted. In this case, compensation assessed and the interest calculated are for acquiring agricultural land and the amount deposited represented the liability under Section 28. I have no doubt in my mind that there was no requirement for collecting TDS for this amount. I clarify that in terms of the judgment of the Supreme Court any liability which goes towards interest calculated under Section 34 would not obtain the benefit and if there is any deduction for TDS for such a component of interest, it shall be perfectly justified.*

While any deduction made under TDS will not cause any serious prejudice even if the amount ought not to have been deducted by enabling a party applying for refund, if, it might involve a large number of cases, it shall be quite unnecessary for land owners to be directed to apply for income tax for refund in every case. Such a requirement is a needless circuitous exercise. What can be prevented even in the first place by not requiring a TDS to be applied for compensation relatable to Section 23 (IA), 23(2) and 28 of the Land Acquisition Act, in respect of the acquisition of agricultural land, it shall not be unnecessarily gone through.

There shall be a direction to the Collector not to make such TDS for deposit of money in Court in satisfaction of the award. A shortfall in the amount in the above cases is directed to be made good by depositing of the same and it shall be open to the Collector to obtain refund of the amount remitted to TDS account, without any such legal requirement from the Income Tax Department, in accordance with law.

> *All the impugned orders are set aside. C.R No. 7740 of 2012 and Civil Revision No. 5644 of 2010 are allowed."*

Learned State counsel, on the other hand has opposed the petition.

The issue involved in the present case, is no longer *res integra* and has been settled by this Court vide order Annexure P-4.

Accordingly, this petition is allowed. Impugned order Annexure P-3 dated 31.10.2013 is set aside. The executing Court is directed to pass a fresh order in accordance with law.

(SABINA)
JUDGE

May 12, 2015
m.singh