IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 5035 OF 2017

SATISH DNYANOBA JAGTAP AND OTHERS
VERSUS
THE UNION OF INDIA AND OTHERS
...
Advocate for Petitioners : Mr. Kale Ajeet B.
AGP for Respondent no.5 : Mr. A.R.Kale
Adv.for resp.no.1 : Mr. Ajay Talhar
Adv. for resp.nos. 2 and 3 : Mr. Alok Sharma
Adv. for resp.no.4 : Mr. L.M.Kulkarni
.....

CORAM : R.M.BORDE AND K.L.WADANE, JJ.

DATED : 3rd May, 2017

O R D E R :

Rule. Rule is made returnable forthwith. With the consent of learned counsel for the respective parties, the petition is taken up for final hearing at the admission stage.

2. It is not a matter of dispute that the National High Way authority has erroneously deducted income tax at source. Section 194LA of the Income Tax Act, 1961 reads as under : -

> " 194LA. *Payment of compensation on acquisition of certain immovable property*.—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 one hundred thousand rupees.

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

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

3. Section 96 of the Right for Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads thus : -

“ 96. No income tax or stamp duty shall be levied on any award or agreement made under this Act, except

> under Section 46 and no person claiming under such award or agreement shall be liable to pay any fee for copy of the same. "

4. In view of the provisions of the Act of 2013 r/w the provisions of Income Tax Act, it was an error on the part of the National High Way Authority to deduct the amount towards tax and remit the same.

5. In view of the above, the petition presented by the petitioner seeking refund of the amount deducted from his compensation being illegal deserves to be allowed.

6. The respondent shall refund the amount deducted at source to the petitioner within a period of six months from today.

7. Rule is made absolute accordingly. No costs.

(K.L.WADANE, J.) (R.M.BORDE, J.)

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