BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2017

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.(MD).No.1382 of 2016
and
C.M.P.(MD)No.11516 of 2016

The National Highways Authority of India,
Rep. by its Project Director,
Dindigul. ... Appellant/Second Respondent

Vs.

1. C.Dheenadhayala Pandian ... First Respondent/Petitioner

2.The District Revenue Officer,
Land Acquisition,
National Highways-7,
Dindigul. ... Second Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 37 of Arbitration and Conciliation Act, calling for the records relating to the award, dated 16.04.2015 made in Ar.O.P.No.60 of 2010 on the file of the learned Principal District Judge, Dindigul and to set aside the same and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.G.R.Swaminathan
Standing Counsel &
Assistant Solicitor General

For R-1 : Mr.K.Jagadeesan

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the National Highways Authority of India, against the order passed by the learned Principal District Judge, Dindigul, in Arbitration O.P.No.60 of 2010, dated 16.04.2015, enhancing the compensation payable by the appellant to the 1st respondent/Land Owner in respect of the land acquired from him, namely, the land comprised in S.No.308/1B measuring an extent of 5890 Sq.meter (63258 Sq.feet) and S.No.321/3B measuring an extent of 4000 Sq.meter (42960 Sq.feet) in Malayagoundanpatti Village, Nilakottai Taluk, Dindigul District, for the purpose of laying National Highways road.

2. The above said land was acquired for the purpose of laying

National Highway. The second respondent/District Revenue Officer passed an award fixing the value of the land at Rs.193.68 per sq. meter and not satisfied with the award passed by the second respondent/District Revenue Officer, the first respondent/claimant filed Ar.O.P.No.60 of 2010 on the file of the learned Principal District Judge, Dindigul, to set aside the award, dated 03.03.2010, passed by the second respondent.

3. After hearing both parties, the District Court passed an award, dated 16.04.2015, enhancing the compensation of Rs.18/- per Sq.feet to Rs.26/- per Sq.feet. The said award passed by the District Court, is being challenged in this appeal.

4. Heard, Mr.G.R.Swaminathan, learned Standing counsel and Assistant Solicitor General for the appellant and Mr.K.Jagadeesan, learned counsel for the first respondent.

5. The only point that arises for consideration before this Court is that in respect of the properties comprised in S.No.308/1B, 3(D)(1) Notification was published on 16.03.2007 whereas in respect of S.No.321/3B, 3(D)(1) Notification was published only on 13.03.2008. However, while calculating the interest, the District Court uniformly calculated the interest from the date 16.03.2007 instead of calculating from 13.03.2008 for the property comprised in S.No.321/3B.

6. Admittedly, the 3(D)(1) Notifications were published on two different dates for the two properties, namely, on 16.03.2007 and on 13.03.2008. While enhancing the compensation, by mistake, the District Court committed an error by calculating interest for both the properties from 16.03.2007. Therefore, the award of the District Court is modified to that extent that the property comprised in Survey No.321/3B would fetch interest on the compensation from 13.03.2008 which is the date of 3(D)(1) Notification. In all other aspects, the award of the Tribunal is confirmed.

7. The other contention is that the TDS amount was not deducted from the compensation awarded to the first respondent/claimant. The learned counsel for the first respondent would submit that it is only a compensation and not income.

8. Mr.G.R.Swaminathan, learned Standing counsel and Assistant Solicitor General for the appellant, after going through the records and the various provisions, submitted that as per Section 194 LA of the Income-tax Act, 1961, the payment of compensation for acquisition of certain properties has been dealt with. Section ***194 LA of the Income-tax Act, 1961***, is extracted as follows:-

> " *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 section 2;

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

From the above it is clear, that TDS is required to be deducted only in respect of residential buildings and not for agricultural lands. In this case, the land acquired are all agricultural lands and therefore, as per Section 194LA of Income Tax Act, 1961, the TDS cannot be deducted. Therefore, the contention of Mr.G.R.Swaminathan, learned Standing Counsel and Assistant Solicitor General for the appellant that the District Court should have deducted TDS for the compensation awarded by it, is not sustainable. The view taken by the District Court is in consonance with Section 194LA of Income Tax Act, 1961 and therefore, it has to be confirmed. Further, the said views are also supported by the Judgment of Punjab-Haryana High Court, in the case of ***Karnail Singh Vs. State of Haryana and others, in C.W.P.No.21077 of 2008, dated 13.08.2009.*** Over and above, the said enhanced compensation and interest for enhanced compensation would come under the foundation of revenue receipt and it would be an income. Therefore, it attracts Section 4 of the Income Tax Act. The said dictum has been given by the Division Bench of Punjab and Haryana High Court in the case of ***Harbans Kaur and others Vs. Union of India and others, in C.W.P.No.7753 of 2011, dated 16.01.2012.*** The relevant paragraph No.6 of the Judgment is extracted as follows:-

"Where the amount paid to the claimants related to amount of enhanced compensation and also interest thereupon, this Court considering similar matter in Kulwant Rai and others V. State of Haryana and others, CWP

> *No.10333 of 2011 decided on 2.6.2011, noticed that the interest element on enhanced compensation was taxable in the year of receipt and in such a situation, the petitioners were required to file the income tax returns as tax was payable on the said amount. It was further observed that the petitioners have an alternative remedy by way of filing the income tax returns and getting the tax deducted at source adjusted against their tax liability. If any amount deducted at source was found to be in excess of the tax liability, the petitioners were entitled to refund in accordance with the provisions of the Act. "*

9. Therefore, the appellant is entitled to deduct TDS only for the interest on the enhanced compensation.

10. Hence the award of the District Court, dated 16.04.2015 is also modified with regard to the interest portion in the above mentioned manner. The Civil Miscellaneous Appeal is disposed of. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To
1. The Principal District Judge, Dindigul.

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.G.R.SWAMINATHAN Advocate in SR. No.5919
+1cc to Mr.K.JAGADEESAN Advocate in SR. No.5550
PMU/PGP
JS/GT/SAR.4/21.08.2017/ 4P-5C

JUDGMENT MADE IN

C.M.A.(MD).No.1382 of 2016
01.02.2017