

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Writ Petition Nos.7874, 9423 and 44382 of 2016

Between

C.Nanda Kumar, S/o. Sri Conjeevaram Lakshman Rao,
Aged about 68 years, R/o. 9-1-86, St. Johns Road, Beside
ISKCON, Regimental Bazar, Secunderabad;
and others

... Petitioners

and

1. Union of India, Rep. by its Secretary,
Ministry of Finance, New Delhi;
and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 13-3-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

- | | | |
|---|---|--------|
| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition Nos.7874, 9423 and 44382 of 2016

% 13-3-2017

C.Nanda Kumar, S/o. Sri Conjeevaram Lakshman Rao,
Aged about 68 years, R/o. 9-1-86, St. Johns Road, Beside
ISKCON, Regimental Bazar, Secunderabad;
and others

... Petitioners

Vs.

\$ Union of India, Rep. by its Secretary,
Ministry of Finance, New Delhi;
and others

... Respondents

! Counsel For Petitioner : Mr. Anand Kumar Kapoor
(in WPs.7874&9423/2016)

Counsel for Petitioners : Mr. K.S. Murthy
(in WP.44382/2016)

Counsel for Respondent No.2 : Ms. K.Mamata,
Standing Counsel

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> Head Note:

? Cases referred:

1. (1999) 8 SCC 667
2. AIR 1967 SC 1616
3. (2002) 2 SCC 127

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Reserved on : 30-01-2017 & Delivered on : 13-3-2017

Coram :

The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition Nos.7874, 9423 and 44382 of 2016

C.Nanda Kumar, S/o. Sri Conjeevaram Lakshman Rao,
Aged about 68 years, R/o. 9-1-86, St. Johns Road, Beside
ISKCON, Regimental Bazar, Secunderabad

... Petitioner
(in W.P.Nos.7874 and 9423 of 2016)

1. P.B. Mangathayar, D/o. Late P.Venugopal,
Aged 67 years, Occ: Retired, Flat No.002,
Block-A, Padma Hamsa Complex,
Sardar Patel Road, Secunderabad-500 003
2. Srikanth Arval, S/o. Late Shri A.Srinivasa Rao,
Aged 47 years, Occ: Managing Director,
Flat Nos.101 & 102, Block-A, Padma Hamsa Complex,
Sardar Patel Road, Secunderabad-500 003
3. Adi Lakshmi, W/o Ranga Rao, Aged 67 years,
Occ: House Wife, Rep. by son: GPA Murthy Suravarapu,
Flat No.203, Block-A, Padma Hamsa Complex,
Sardar Patel Road, Secunderabad-500 003
4. Ravindranat Padukone, S/o Sri Narendanath,
Occ: Retired, Flat No.301, Block-A, Padma Hamsa
Complex, Sardar Patel Road, Secunderabad-500 003
... Petitioners (in W.P.No.44382 of 2016)

Vs.

1. Union of India, Rep. by its Secretary,
Ministry of Finance, New Delhi
2. Commissioner of Income Tax (TDS), Hyderabad,
Income Tax Towers, A Block, A.C. Guards,
Hyderabad-500 004
3. State of Telangana, Rep. by its Secretary,
Revenue Dept. (LA), at Secretariat, Hyderabad

4. District Collector, Hyderabad
5. Spl. Grade Deputy Collector & LAO,
Metro Rail Project, GHMC, Hyderabad
6. Hyderabad Metro Rail Corporation,
Rep. by its Managing Director,
Saifabad, Hyderabad

... Respondents

For Petitioner : Mr. Anand Kumar Kapoor
(in WPs.7874&9423/2016)

For Petitioners : Mr. K.S. Murthy
(in WP.44382/2016)

For Respondent No.2 : Ms. K.Mamata,
Standing Counsel



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms JUSTICE J.UMA DEVI

Writ Petition Nos.7874, 9423 and 44382 of 2016

Common Order: (per V.Ramasubramanian, J.)

Either aggrieved by a Circular issued by the Commissioner of Income Tax (TDS) directing the District Collector to deduct tax at source from out of the compensation payable under the 2013 Land Acquisition Act or aggrieved by the action of the Land Acquisition Officer in deducting or attempting to deduct tax at source from out of the compensation payable under the 2013 Land Acquisition Act, the petitioners have come up with the present writ petitions.

2. Heard Mr. Anand Kumar Kapoor and Mr. K.S. Murthy, learned counsel appearing for the petitioners and Ms. K.Mamata, learned Standing Counsel appearing for the Income Tax Department.

3. The petitioners in these writ petitions owned certain lands. Those lands were acquired by the Government for the proposed Viaduct and Stations Alignment of Metro Rail under the Hyderabad Metro Rail Project. Admittedly, the acquisition was in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, hereinafter referred to as the 2013 Act.

4. After awards were passed, the competent authority started disbursement of compensation, without deducting tax at source under Section 194LA of the Income Tax Act, 1961. Tax was not deducted at source in view of Section 96 of the Act 30 of 2013.

5. But the Commissioner of Income Tax (TDS) issued a Circular dated 05-11-2015 to the District Collector calling upon him to deduct tax at source while making payment of compensation under the 2013 Act, on the ground that as per the decision of the Kerala High Court in *Kochi Metro Rail Ltd. v. Union of India*, Section 96 of the 2013 Act would not override the provisions of Section 194LA of the Income Tax Act, 1961. Therefore, challenging the said Circular of the Commissioner of Income Tax (TDS), dated 05-11-2015, the land owners have come up with the first two writ petitions, namely, W.P.Nos.7874 and 9423 of 2016.

6. At the time when notice was ordered in the above writ petitions, this Court granted a limited interim order directing the District Collector to deposit with the Registrar (Judicial) of this Court, the tax already deducted at source, with a further direction to the Registrar (Judicial) to keep the amount in an interest bearing cumulative fixed deposit.

7. Subsequently, the Central Board of Direct Taxes (CBDT) issued a Circular bearing No.36/2016, dated 25-10-2016, clarifying that the compensation received under an award exempted from the levy of income tax under

Section 96 of the 2013 Act shall not be taxable, even if there is no specific provision for exemption under the Income Tax Act, 1961. Therefore, one set of land owners whose lands were acquired have come up with the 3rd writ petition W.P.No.44382 of 2016 seeking a *mandamus* not to deduct tax at source, in terms of the Circular of the CBDT.

8. The short question that arises for consideration in these writ petitions is as to whether income-tax is liable to be deducted at source under Section 194LA of the Income Tax Act, 1961 despite the provisions of Section 96 of the Central Act 30 of 2013.

9. Assailing the claim of the Income Tax Department, it is contended by Mr. Anand Kumar Kapoor, learned counsel for the petitioners in the first two writ petitions –

(a) that since Section 194LA of the Income Tax Act, 1961 was incorporated in the year 2004, the latter law namely Section 96 of the 2013 Act will prevail over the same,

(b) that the provisions of Section 96 of the 2013 Act should be taken to be Special Law vis-à-vis Section 194LA of the Income Tax Act and hence the principle that Special Law overrides the General will apply,

(c) that the decision of the Single Judge of the Kerala High Court in *Kochi Metro Rail Ltd.* has already been overturned by the Division Bench of the Kerala High Court,

(d) that there can be no tax liability in law if there is any ambiguity in a provision, as pointed out by the Constitution

Bench of the Supreme Court in *Mathuram Agrawal v. State of Madhya Pradesh*¹,

(e) that under Article 265 of the Constitution of India, there cannot be a collection of tax in respect of something of which there can be no levy, as indicated by the Supreme Court in Constitution Bench decision in *Bhawani Cotton Mills Ltd. v. State of Punjab*²,

(f) that any doubt that the respondents had about the impact of Section 96 of the 2013 Act stands cleared by the Circular issued by the CBDT dated 25-10-2016, which has a binding effect upon the revenue, as held by the Supreme Court in *Collector of Central Excise, Vadodra v. Dhiren Chemical Industries*³ and *Union of India v. Arviya Industries India Ltd*⁴, and

(g) that since what is ordained to be deducted under Section 194LA is actually income-tax, there cannot be a collection unless the amount was liable to tax under the Income Tax Act, 1961.

10. Supplementing the above arguments, it is contended by Mr. K.S. Murthy, learned counsel for the petitioners in the 3rd writ petition that even Section 190(1) of the Income Tax Act contains a clue as to the fact that what is sought to be deducted at source is actually income-tax and

¹ (1999) 8 SCC 667

² AIR 1967 SC 1616

³ (2002) 2 SCC 127

⁴ (2014) 3 SCC 159

hence in the teeth of Section 96 of the 2013 Act, Section 194LA itself will have no application.

11. In response to the above contentions, Ms.K.Mamata, learned Standing Counsel appearing for the Department, submitted –

(a) that the benefit conferred under Section 96 of the 2013 Act is on the owner of the land while the obligation cast under Section 194LA of the Income Tax Act is on the person responsible for making payment to the land owner and hence both should not be mixed up,

(b) that the question as to whether an income is exempt from tax or not lies within the jurisdiction of the Assessing Officer and hence the person responsible to make payment cannot be allowed to assume the role of the Assessing Officer, for the purpose of determining whether tax should be deducted at source or not in a given case,

(c) that the obligation cast under Section 194LA is in respect of “**any sum**” and hence the obligation is absolute,

(d) that what is exempt under Section 96 of the 2013 Act is only the payment of tax and not the liability of a person making payment to another, to deduct tax at source, and

(e) that even Circular No.36/2016 of the CBDT does not cover the liability of the payer to deduct tax at source and hence the reliance placed upon the same is misconceived.

12. We have carefully considered the above submissions.

13. The first two contentions of Mr. Anand Kumar Kapoor, learned counsel for the petitioners, raised on the principles that the latter Parliamentary enactment will prevail over the previous one and that a Special Law will prevail over the general, in our considered view, do not arise at all in the case on hand. The Income Tax Department has not taken a stand that dehors Section 96 of the 2013 Act, income-tax is payable on the amount of compensation determined under the 2013 Act. When it is not the case of the Department that the liability to pay income-tax on the amount of compensation payable under the 2013 Act, continues to subsist despite Section 96 of the 2013 Act, we do not know why such contentions are to be addressed.

14. It is true that the Commissioner of Income Tax (TDS), Hyderabad, was over-jealous in issuing a letter dated 05-11-2015 as though Section 194LA of the Income Tax Act would prevail over Section 96 of the 2013 Act. But even this Circular did not speak about the liability to pay tax. This Circular addressed itself only to the question of deduction of tax at source and not the very liability to pay tax. Therefore, the first two contentions of the learned counsel for the petitioners do not have any correlation to the actual controversy arising for consideration in this case.

15. The 3rd contention of Mr. Anand Kumar Kapoor, learned counsel for the petitioners, that the decision of the Single Judge of the Kerala High Court in *Kochi Metro Rail Ltd.*,

has been overturned by the Division Bench of the Kerala High Court does not appear to be correct. In *Kochi Metro Rail Ltd.*, the person liable to pay compensation under the 2013 Act namely Kochi Metro Rail Ltd., filed a writ petition challenging its liability to deduct tax at source under Section 194LA. The learned Judge dismissed the writ petition holding that the obligation under Section 194LA is upon the payer, who is nowhere in the picture under Section 96 of the 2013 Act. This decision of the learned Single Judge in W.P.(C) No.21478 of 2015, dated 09-9-2015, does not appear to be the subject matter of any decision by the Division Bench. On the contrary, two cases came to be decided by two different Division Benches of the very same Kerala High Court. The first was in W.A.No.1422 of 2015 decided on 18-01-2016 in *K.Sreekumar v. The District Collector*. What was in issue before the Division Bench in the said case was as to whether the award passed in that case was under the 2013 Act or under the 1894 Act. There was also a dispute between the parties in the said case leading to a reference under Section 31 of the 1894 Act. Incidentally, a question arose as to whether income-tax could be deducted at source. The Division Bench held that it is not, on a statement made by the Government Pleader appearing for the State of Kerala. Neither the Union of India nor the Commissioner of Income Tax was a party to the judgment of the Division Bench of the Kerala High Court in *K.Sreekumar*.

16. The 2nd decision of the Division Bench of the Kerala High Court is dated 08-8-2016 in W.A.No.1528 of 2016 in the *Commissioner of Income-tax v. Pramod and others*. The said case arose out of a direction issued by a Single Judge in yet another writ petition not to deduct tax at source. The Division Bench confirmed the judgment of the Single Judge simply on the basis of the decision in W.A.No.1422 of 2005 without any discussion on the scope of Section 194LA. Therefore, the 3rd contention that the decision of the Single Judge of the Kerala High Court in *Kochi Metro Rail Ltd.*, was overturned by a Division Bench of the Kerala High Court, is completely contrary to facts. The 1st Division Bench of the Kerala High Court answered the question on a concession given by the Government Pleader for the State of Kerala without the Union of India and the Commissioner of Income Tax being parties to the same and the 2nd Division Bench decided the question on the basis of the decision of the 1st Division Bench. Therefore, with great respect, we hold that those decisions did not determine the legal issue now before us, point blank.

17. The 4th contention of the learned counsel for the petitioners is that there is no tax liability in law if there is ambiguity in the provision as to any one of the 3 components of Tax Law namely subject of tax, the person who is liable to pay tax and the rate at which tax is to be paid. Reliance is placed in support of this contention on the decision of the

Constitution Bench of the Supreme Court in *Mathuram Agrawal*.

18. But we do not know why the petitioners raise this contention. We are concerned in this case with the impact of Section 194LA of the Income Tax Act, 1961 upon Section 96 of the 2013 Land Acquisition Act. There is no ambiguity either in Section 96 of the 2013 Land Acquisition Act or in Section 194LA of the Income Tax Act. Therefore, this contention is completely irrelevant.

19. The 5th contention revolves around Article 265 of the Constitution of India. Under Article 265, no tax shall be levied or collected except by authority of law. The contention of the learned counsel for the petitioners is that there can be no collection of income-tax, when there was no levy on the compensation payable under the Land Acquisition Act. Reliance is placed in this regard upon the observation of the Constitution Bench of the Supreme Court in paragraph-21 of its decision in *Bhawani Cotton Mills Ltd.*, wherein it was pointed out that if a person is not liable for payment of tax at all at any time, the collection of a tax from him with a possible contingency of refund at a later stage, will not make the original levy valid, because if particular sales or purchases are exempt from taxation altogether they can never be taken into account at any stage for the purpose of calculating or arriving at the taxable turnover and for levying tax.

20. But the observations of the Supreme Court in paragraph-21 of its decision cannot be seen in isolation. We must remember that the TDS regime came at least a couple of decades after the decision of the Supreme Court in *Bhawani Cotton Mills Ltd.* Under the TDS regime, every person making payment of any sum becomes obliged to deduct a particular percentage of the said amount for payment to the Department. This collection under Section 194LA is authorised by law. All that Article 265 of the Constitution of India says is that no tax shall be levied or collected except by the authority of law. Section 194LA is that authority of law and it is not under challenge. Therefore, to say that the deduction of tax at source is violative of Article 265, is wholly untenable.

21. As pointed out by the Supreme Court itself in paragraph-22 of its decision in *Bhawani Cotton Mills Ltd.*, there is a broad distinction between the exemption from payment of tax provided in the Statute itself and the non-liability or non-imposition of tax. In cases where an exemption from payment of tax or a rebate of tax is granted, the benefit is claimed within the four corners of the Act. If something falls outside the purview of the Tax Law, it is only then that the observations of the Supreme Court in paragraph-21 of its report would apply.

22. The next contention of the learned counsel for the petitioners is that after the issue of Circular No.36/2016,

dated 25-10-2016, there cannot be any doubt or dispute on the issue on hand. Even if the purport of the law is something and the Circulars issued by the Central Board of Excise and Customs are of a different implication, these Circulars are held by the Supreme Court in *Dhiren Chemical Industries* to be binding upon the revenue. In any case, the Circulars issued under Section 119 of the Income Tax Act, 1961 and Section 37B of the Central Excise Act, 1944 are held very clearly in several decisions of the Supreme Court including the last one in *Arviva Industries India Ltd.*, to be binding upon the revenue. Therefore, it is contended that after the issue of Circular No.36/2016, the respondents cannot even take any other plea.

23. There is no dispute about the fact that the Circulars issued by the Central Board are binding upon the revenue. But in the Circular dated 25-10-2016, there is no whisper about the implication of Section 96 of the 2013 Land Acquisition Act upon Section 194LA of the Income Tax Act, 1961. This can be appreciated from the operative portion of Circular No.36/2016, which reads as follows:

“3. As no distinction has been made between compensation received for compulsory acquisition of agricultural land and non-agricultural land in the matter of providing exemption from income-tax under the RFCTLARR Act, the exemption provided under section 96 of the RFCTLARR Act is wider in scope than the tax-exemption provided under the existing provisions of Income-tax Act, 1961. This has created uncertainty in the matter of taxability of compensation received on compulsory acquisition of land, especially those

relating to acquisition of non-agricultural land. The matter has been examined by the Board and it is hereby clarified that compensation received in respect of award or agreement which has been exempted from levy of income-tax vide section 96 of the RFCTLARR Act shall also not be taxable under the provisions of Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961.”

24. Therefore, the contention that the above Circular steers clear of any controversy, is born out of a complete misunderstanding of the scope of the Circular.

25. That takes us to the last contention, a part of which revolves around the language employed in the last line of Section 194LA and the other part revolving around Section 190 of the Income Tax Act. Despite the fact that Section 194LA obliges the payer of “**any sum**” to make a deduction, the nature of the deduction is clearly indicated to be “income-tax” in the last part of Section 194LA. The substantive portion of Section 194LA concludes with the words “**as income-tax thereon**”.

26. Similarly, the entire scheme of Chapter-XVII of the Income Tax Act, 1961, as indicated by Section 190(1) is the payment of tax on income, by way of deduction or collection at source. Therefore, the last contention is that Section 194LA of the Income Tax Act, 1961, cannot be pressed into service on an income which is not liable to tax under Section 96 of the 2013 Land Acquisition Act.

27. The aforesaid contention, in our considered view, merits acceptance. If we have a look at the entire scheme of the Income Tax Act, which is as complicated as complications could be, it may be seen that the Act is divided into XXIII Chapters. All the Chapters flow in a logical sequence. While the first few Chapters deal with income, computation of income etc., the next few Chapters deal with deductions, rebates and levies, anti-avoidance etc. Chapter-XIV prescribes the procedure for assessment and Chapter-XV deals with liability in special cases. Chapter-XVII in entirety deals with collection and recovery of tax. This Chapter is divided into 6 parts, namely, (1) general, (2) deduction at source, (3) advance payment of tax, (4) collection and recovery, (5) interest chargeable in certain cases and (6) levy of fee in certain cases.

28. Therefore, it is clear that Chapter-XVII in entirety is about deduction or collection and recovery of “tax”. This is why Section 190(1) of the Act speaks only about tax on income. Section 190(1) of the Income Tax Act, 1961 reads as follows:

“190. Deduction at source and advance payment.

(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter.”

29. If there can be no tax on a particular income by virtue of some special provisions contained in an enactment other than the Income Tax Act, 1961, it is not known how any provision contained in Chapter-XVII of the Income Tax Act could be invoked. The emphasis under Section 190(1) is on “the tax on such income”. What follows from Sections 192 onwards are actually deduction or collection at source or advance payment of “**tax on income**”. Once this is clear, we will have no difficulty in concluding that Section 96 of the 2013 Land Acquisition Act makes Section 194LA of the Income Tax Act, 1961, inapplicable to the compensation paid under the award.

30. Section 194LA of the Income Tax Act, 1961 reads as follows:

“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 two 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.”

31. The last few words of the substantive part of Section 194LA of the Income Tax Act, 1961, also makes it clear that the nature of the deduction was income-tax. In view of the usage of the words “***such sum as income-tax thereon***” towards the end of the substantive part of Section 194LA, the words “any sum” appearing in the 1st line of Section 194LA gets circumscribed.

32. Having analysed Sections 190 and 194LA of the Income Tax Act, 1961, let us now have a look at Section 96 of the 2013 Land Acquisition Act. It reads as follows:

“96. Exemption from income-tax, stamp duty and fees.—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 any such award or agreement shall be liable to pay any fee for a copy of the same.”

33. Section 96 mandates that no income-tax shall be levied on any award made under the Act except under Section 46. Section 46 deals with the purchase of land by a person other than a specified person through private negotiations. The benefit of Section 96 is not available when a land is purchased through private negotiations by a person other than a specified person under Section 46(1).

34. Therefore, in cases other than those covered by Section 46 of the 2013 Land Acquisition Act, the levy of income-tax is barred by Section 96 and as a consequence, the deduction or collection under Section 194LA of the Income Tax Act, 1961, is impermissible.

35. Before concluding, we have to address ourselves to two formidable contentions raised by Ms. Mamata, learned Standing Counsel for the respondents. The first is that Section 194LA imposes an obligation in respect of “any sum” and the second is that the obligation is upon the payer, who has no protection under Section 96 of the 2013 Land Acquisition Act.

36. Insofar as the 1st contention is concerned, we have to admit that Section 194LA uses the expression “any sum” and not the expressions “income”, “payment” or “amount”. In *T.Raj Kumar v. Union of India* [W.P.No.17241 of 2015 and batch, dated 12-4-2016] decided by a Division Bench of the Madras High Court to which one of us (VRS, J.) was a party, the Court provided a tabular statement listing out different words/expressions used in the Income Tax Act, 1961 such as “sum”, “income” and “amount” and the Sections in which they are used. The tabular statement is as follows:

Word Used	Provision in Chapter XVII
Sum	191 [Direct Payment]
	194C [Payments to Contractors]
	194IA [Transfer of Immovable Property]
	194J [Fees for professional or technical services]
	194L [Acquisition of Capital Asset]
	194LA [Acquisition of certain Immovable Property]
	195 [Other Sums]
	196 [Payable to Government, Reserve Bank or certain corporations]

Income	190, 193 [Interest on Securities]
	194-I [Rent], 194A [Other Interest]
	194B [Winnings from Lottery]
	194BB [Winnings from Horse Race]
	194D [Insurance Commission]
	194DA [Payments for Life Insurance]
	194E [Payment to non-resident sportsmen]
	194G [Commission on Sale of Lottery Ticket]
	194H [Commission/Brokerage]
	194K [Income in respect of Units]
	194LB [Interest from Infrastructure Debt Fund]
	194LBA [Units of a business trust]
	194LBB [Units of an Investment Fund]
	194LC [Interest from an Indian Company]
	194LD [Interest on Certain Bonds and Government Securities]
	195 [Other Sums]
	196A [Units of Non Residents]
	196B [Units]
	196C [Foreign Currency Bonds or shares of Indian company]
	196D [FIIs from securities]
Amount	192(1) [Salary]
	192A [Accumulated Balance to Employee]
	194 [Dividends]
	194EE [National Savings Scheme]
	194F [Repurchase of Units by Mutual Fund or UTI]

37. But as we have pointed out earlier, the primary object of Section 194LA is to oblige the payer of a sum of money to deduct something towards income-tax. Therefore, the expression “any sum” is actually controlled by the expression “income-tax”.

38. Insofar as the 2nd contention is concerned, under the scheme of Section 96 of the 2013 Land Acquisition Act, there is no place for a payer of a sum of money. But the prayer can be seen either as a person recovering the amount due to the Income Tax Department from the payee or as a person making payment to the Income Tax Department on behalf of the payee. In the former case, the payer acts for the benefit of the Department and in the latter case, he acts on behalf of the assessee. Irrespective of the nature of the role played by the payer, Section 96 would operate as a bar, since one of the 3 components of the levy is taken away by

Section 96. Therefore, merely because section 96 of the 2013 Act confers a benefit upon the landowner/assessee/payee and section 194LA of the Income Tax Act imposes an obligation upon the payer, it cannot be concluded that the former cannot control the latter.

39. We cannot lose sight of the fact that Central Act 30 of 2013 is a welfare legislation, which made a quantum leap from the provisions of the 1894 Land Acquisition Act. The object of the 2013 Act is not merely to provide just and fair compensation but also to make provisions for the rehabilitation and resettlement of the families of the land losers. The preamble to the Act shows that the Act was intended to look at land losers as persons who can become partners in the development of the country. Section 96 of the 2013 Act was intended to be a tool towards securing the laudable objectives of the 2013 Act. Therefore, it can never be contended that Section 194LA of the Income Tax Act will make inroads into the welfare provision contained in the 2013 Land Acquisition Act. There is no use in giving effect to the provisions of Section 96 of the 2013 Act by first asking the Land Acquisition authority to deduct tax under Section 194LA and then driving the poor land losers from pillar to post to get a refund of the amount from the Income Tax Department. An interpretation that will lead the farmers and land losers to go from the Collectorate to the Income Tax Officer, is antithetic to the objects and reasons of the 2013

Act. Hence, the second contention of the learned standing counsel for the Department is liable to be rejected. Accordingly, it is rejected.

40. Therefore, in fine, the writ petitions are allowed and there shall be a direction to the respondents not to deduct tax at source, whenever any compensation is paid for the acquisition of a land under the 2013 Land Acquisition Act, except those covered by Section 46 of the 2013 Act. In cases where by way of an interim order the tax deducted at source was directed to be kept in a Fixed Deposit in the name of the Registrar (Judicial) of this Court, the Registry shall either liquidate the deposit and transfer the funds to the account of the petitioners or makeover/transfer the Fixed Deposit in the name of the concerned petitioners to enable them to encash the same. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

J.UMA DEVI, J

13th March, 2017.

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Note:-

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition Nos.7874, 9423 and 44382 of 2016
(per VRS, J.)



13th March, 2017.
(Ak)