**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 22.11.2019**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

**W.P(MD)No.21234 of 2019**

1.Alagarsamy
2.Venkitalakshmi
3.Nagaraj
4.Rajendran ... Petitioners

Vs.

The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to refund the TDS amount with interest deducted by the respondent to each of the petitioner herein based on the petitioners representation dated 22.08.2017 within a time stipulated by this Court.

For Petitioners : Mr.A.Sivaji

For Respondent : Ms.V.P.M.Vaishnavi,
Government Advocate.

**ORDER**

Mr.A.Sivaji, learned counsel on record for writ petitioners and Ms.V.P.M.Vaishnavi, learned Government Advocate on behalf of sole respondent are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Earlier proceedings of this Court dated 04.10.2019 captures / encapsulates necessary facts ie., factual matrix as well as controversy in instant Writ Petition in a nutshell and the same reads as follows:

> 'Mr.A.Sivaji, learned counsel on record for writ petitioners is before this Court.
>
> *2.Learned counsel submits that 'lands belonging to the petitioners' (hereinafter referred to as 'said lands' for the sake of brevity, clarity and convenience) were acquired*

*under the 'Land Acquisition Act, 1894 (1 of 1894)' (hereinafter referred to as 'said Act' for the sake of brevity). It is submitted that award under Section 11 of the said Act was passed on 15.02.1995 and the same was enhanced in proceedings under Section 18 of the said Act, vide order dated 06.10.1998 made by the jurisdictional Court.*

*3.The case of the writ petitioners is that while disbursing the compensation qua the award as enhanced by the jurisdictional Court, income tax has been deducted at source, in other words 'TDS' which stands for 'Tax Deduction at Source' is the central theme of instant writ petition.*

*4.Learned counsel adverting to Sections 23(1-A), 23(2) and 28 of said Act submits that interest on compensation on any kind fall in one basket.*

*5.Be that as it may, most important submission is that the said lands are agricultural lands. Saying so, learned counsel drew the attention of this Court to Section 194LA of the 'Income Tax Act, 1961' (hereinafter referred to as 'IT Act' for the sake of brevity) and submitted that agricultural lands are exempt from tax liability qua compensation/enhanced compensation, consideration/enhanced consideration and interest thereon. To buttress his submission, a judgment of Hon'ble Supreme Court in Commissioner of Income-Tax Faridabad Vs. Bir Singh (HUF), Ballabgarh [Civil Appeal No.4401 of 2009, dated 16.07.2009] and subsequent order made by a Hon'ble Single Judge of Punjab-Haryana High Court being order dated 18.07.2013 in Civil Revision No.7740 of 2012 in the case of* ***Jagmal Singh & Anr Vs., State of Haryana & Anr*** *(following said Hon'ble Supreme Court order) were pressed into service. According to learned counsel for writ petitioners, these case laws are for the proposition that compensation or any kind on consideration paid for agricultural lands that are acquired are exempt from TDS.*

*6. Ms.V.P.M.Vaishnavi, learned Government Advocate accepts notice on behalf of sole respondent and seeks time to get* *instructions and revert to this Court.*

*7. To be noted, even prior to filing this writ petition, writ petitioners have sent a representation dated 22.08.2017.*

*8. In the next listing, Registry to show the name of State counsel.*

*9. List in the motion list on 18.10.2019.'*

4.For the purpose of recording the trajectory of this Writ Petition, it is necessary to set out subsequent proceedings dated 18.10.2019 and 08.11.2019 which read as follows:

*'18.10.2019:*

*Read this in conjunction with and in continuation of earlier proceedings of this Court dated 04.10.2019.*

*Mr.A.Sivaji, learned counsel is before this Court on behalf all the writ petitioners.*

*Learned State Counsel has filed typedset of papers, but seeks time to get further instructions and make submissions.*

*List on 08.11.2019.*

*08.11.2019:*

*Read this in conjunction with and in continuation of earlier proceedings of this Court dated 18.10.2019.*

*Learned State Counsel today requests time for filing counter-affidavit.*

*Learned State Counsel undertakes to file counter-affidavit by next listing, after giving advance copy to the learned counsel for writ petitioners.*

*List on 22.11.2019.'*

5.Today, sole respondent has filed a counter-affidavit dated 21.11.2019. Most relevant portions of the counter-affidavit are contained in paras 5 and 6 and the relevant portions read as follows:

*'5....Moreover the said land acquired from the petitioners are all dry land and the same have also been reveals through the land transfer statement made at the time of acquisition dated 14.03.1995.*

*6..... Further, deduction amount of TDS to the compensation amount kept under Suspense Account in No.8658 is under process to provide Form No.16A to the petitioner.'*

6.From the counter-affidavit as well as typed set of papers filed by the respondent wherein Form 16A which is certificate of deduction of tax at source under Section 203 of IT Act brings to light two significant points. One is, there is no disputation on the part of the respondent that lands that were acquired under said Act are agricultural lands. To be noted, it is averred in counter-affidavit that acquired lands are dry lands, but there is no disputation or contestation qua writ petitioner's assertion that they are agricultural lands. Second point is, the deduction of TDS qua compensation amount has been made but kept under suspense account. Therefore, there has been a doubt in the mind of respondent about whether tax should be deducted at source at all.

7.This takes us to IT Act. Most relevant provision in IT Act in this regard is Section 194LA. What is of utmost relevance to us in instant case is second proviso and more particularly explanation (i) to second proviso to Section 194LA of IT Act. For the purpose of convenience and ease of reference this Court deems it appropriate to extract entire Section 194LA of IT Act:

> *'194LA. 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 lakh and fifty thousand] rupees:*
>
> *Provided further that no deduction shall be made under this Section where such payment is made in respect of any award or agreement which has been exempted from levy of income-tax under Section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).]*
>
> *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.]'*

8.'Agricultural income' has been defined in IT Act under Section 2(1A), but with regard to agricultural land, it would be more appropriate to say that there is a description and that description occurs in the definition of 'capital asset' under Section 2(14) of IT Act. More particularly, Section 2(14)(iii) of IT Act which reads as follows:

> '2(14)(iii) agricultural land in India, not being land situate_
>
> (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand.'

9.Read this in continuation of explanation (i) to second proviso to Section 194LA of IT Act. There is some force in the controversy in instant matter.

10.It may not be necessary to dilate further on these aspects of the matter. As already alluded to supra, there is no disputation qua writ petitioners' assertion that lands acquired are agricultural lands. All that the counter-affidavit says is, it is dry land. Agricultural lands can either be dry or wet lands. As alluded to supra, there is no disputation that if it is agricultural land, question of deduction of tax at source will not arise in the light of view taken by a Hon'ble Division Bench of Andhra Pradesh High Court in *C.Nanda Kumar and others vs. Union of India and others* [2017 SCC Online Hyd 55] and by a Hon'ble Single Judge of the Punjab and Haryana High Court in *Jagmal Singh's case* which in turn has been taken by drawing inspiration from order of Hon'ble Supreme Court in C.W.P.No.4401 of 2009. To be noted, this C.W.P has been referred as Civil Appeal No.4401 of 2009 which has been extracted and reproduced supra, but it is Civil Writ Petition.

11.As far as Section 194LA of IT Act is concerned, it no doubt uses the expression any 'sum' and does not use the expression 'income'. This came up for consideration before a Hon'ble Division Bench of the Andhra Pradesh High Court in *C.Nanda Kumar's case.*

12.Hon'ble Justice V.Ramasubramanian presiding over a Division Bench of the Andhra Pradesh High Court (as his Lordship then was) penned *C.Nanda Kumar's* Judgment and this aspect of the matter ie., Section 194LA of IT Act referring to the expression any 'sum' and not 'income' was dealt with in paragraph 36 which reads as follows:

*'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]'*

13.Further, what is of utmost significance is paragraph 39, which reads as follows:

> '*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 in roads 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.'*

14.In the hearing today, it emerges clearly that the principle laid down in *C.Nandakumar's case* applies to the instant case on hand in all force. This Court respectfully follows the view taken in *C.Nandakumar's case*.

15.This leads this Court to the inevitable sequitur that prayer of writ petitioners deserve to be acceded to.

16.Instant Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

+1 CC to M/s.A. SIVAJI, Advocate ( SR-100831[F] dated 25/11/2019 )

+1 CC to M/s.Special Government Pleader ( SR-101130[F] 25/11/2019 )

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22.11.2019

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