IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGRH

C.R. No. 651 of 2018
Date of Decision: March 12, 2019

Market Committee, Safidon ... *Petitioner*

Versus

Rattan Singh and another ... *Respondents*

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Surabhi Kaushik, Advocate,
for Mr. Prateek Mahajan, Advocate,
for the petitioner.

Mr. Ved Parkash, Advocate,
for respondent No.1.

Amit Rawal, J.(Oral)

Short point involved in this case is whether the application of the respondent-decree holder under Section 151 C.P.C. for payment of the balance amount of Rs. 24,12,554/- on account of illegal deduction of the Tax Deducted at Source (for short `TDS') on the compensation would be entertained.

Learned counsel. appearing on behalf of the petitioner, submitted that TDS was deducted on the payment of interest and not on the compensation in accordance with the provisions of Income Tax Act. If, at all, the respondent being the assessee or is not being assessee can always file return, claim the deduction if his income does not fall within the permissible tax limit. In support of her contention, relied upon a Division Bench judgment of this Court rendered in ***Naresh Kumar Jain and others vs. State of Haryana and others,*** reported in ***2017(4) PLR 193.***

Learned counsel appearing on behalf of respondent – decree holder submitted that Market Committee had deducted 20% as TDS, whereas it should be 10% and also placed reliance upon a judgment of Hon'ble Supreme Court rendered in ***Union of India and others vs. Hari Singh and others, Civil Appeal No. 15041 of 2017, decided on 15.09.2017.***

I have heard learned counsel for the parties and perused the paper-book.

The directions contained in the case of ***Hari Singh*** *(supra)* reads as under:-

> *"1) The respondents shall file appropriate returns before the Assessing Officer(s) in respect of Assessment years in question within a period of two months from today in case they feel that the compensation in respect of land belonging to them which had been acquired was agricultural land, and claim refund of the tax which was deducted at source and deposited with the Income Tax Department. On the filing of these returns, the Assessing Officer(s) shall go into the aforesaid question and wherever it is found that the compensation was received in respect of agricultural land, the tax deposited with the Income Tax Department shall be refunded to these respondents.*
>
> *2) While determining as to whether the compensation paid was for agricultural land or not, the Assessing Officer(s) will keep in mind the provisions of Section 28 of the Land Acquisition Act and the law laid down by this Court in `Commissioner of Income Tax, Faridabad v. Ghanshyam (HUF)' [2009 (8) SCC 412] in order to ascertain whether the interest given under the said provision amounts to compensation or not.*
>
> *3) The direction to refund the amount of Tax Deducted at Source (TDS) to the Land Acquisition Collector is, accordingly, set aside. However, in those cases where the*

amount has already been refunded, no interference is called for and it will be for the Income Tax Department to proceed in accordance with the provisions of Income Tax Act.

4) Where such notices have not already been issued or assessments have not already been made, if such an action is taken within a period of two months from today, issue of limitation would not come in the way of the Income Tax Department. This order is passed having regard to the fact that the present proceedings were pending in this Court because of which it was not possible for the Income Tax Department to issue these notices earlier.

5) In future, Land Acquisition Collectors shall follow the procedure as stipulated by the High Court of Kerala in Nalini's case, which is reproduced above."

The remedy, in such situation, was not to submit the application, but to claim the refund. Even if the department had deducted 20%, the claimant would be entitled for refund of amount. Question with regard to the deduction of 10% or 20% is kept open.

In view of directions contained in the order dated 15.09.2017, impugned order is modified.

Revision petition stands disposed of accordingly.

March 12, 2019 **(Amit Rawal)**
vkd **Judge**

Whether speaking / reasoned : Yes

Whether reportable : No