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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 13960/2018 & CM Appl.No. 54669/2018**

M/S PREM SUKH BOTHRA (HUF) AND ORS. ..... Petitioners

Through: Mr. Akhil Sachar & Ms.Sunanda Tulsyan, Advocates

versus

OFFICE OF THE COMETENT AUTHORITY (LAND ACQUISTION) UNDER THE NATIONAL HIGHWAYS ACT, 1956 AND ORS. ..... Respondents

Through: Mr. Yeeshu Jain & Ms. Jyoti Tyagi, Advocates for Respondent No.1
Mr. Kirtiman Singh, CGSC & Ms. Shruti Dutt, Advocates for Respondent/UOI
Mr. Zoheb Hossain, Sr.standing counsel for Revenue
Ms. Padma Priya & Mr. Tavinder Sidhu, Advocates for Respondent/M.V.Kivi Law Firm

\+ **W.P.(C) 753/2019 & CM Appl.No. 3279/2019**

SATINDER SINGH GREWAL ..... Petitioner

Through: Mr. Akhil Sachar & Ms. Sunanda Tulsyan, Advocates

versus

OFFICE OF THE COMPETENT AUTHORITY (LAND ACQUISITION) AND ORS. ..... Respondents

Through: Mr. Yeeshu Jain & Ms. Jyoti Tyagi, Advocates for Respondent No.1
Ms. Shiva Laxmi, CGSC, Mr. Abhishek Kumar Choudhary, Govt. Pleader with Mr. Brijesh Kumar Choudhary,Advocates for Respondent No.1/UOI
Mr. Zoheb Hossain, Sr.standing counsel for Revenue

Ms. Padma Priya & Mr. Tavinder Sidhu,
Advocates for Respondent/M.V.Kivi Law Firm

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER

% **16.05.2019**

1. In both these petitions the common question that arises is whether compensation payable for acquisition of land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter the '2013 Act') is amenable to income tax and if so whether at the time of payment of compensation there is a requirement for deduction of Tax at Source (TDS)?

2. Section 96 of the 2013 Act reads as under:-

> "**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."

3. Prior to the insertion of the second proviso to Section 194 LA of the Income Tax Act, 1961 (IT Act) it read as under:

> "194 LA. 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:"

4. A doubt arose whether in view of Section 96 of the 2013 Act, compensation payable for acquisition of land other than agricultural land was amenable to income tax? The Central Board of Direct Tax ('CBDT') sought to clarify the position by issuing on 25th October 2016, paras 2 and 3 of which read as under:

"2. The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, *inter alia* provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

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."

5. In terms of the above Circular, whether compensation was received in

respect of the acquisition of agricultural or non-agricultural land, no income tax would be levied on the compensation amount.

6. The position has now been made even more explicit by the introduction, with effect from 1st April 2017, of the second proviso to Section 194 LA which reads as under:

> "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."

7. In view of the clear legal position as far as the present two cases are concerned, the compensation having been determined to be paid to each of the Petitioners under the 2013 Act is not liable for deduction of Income Tax, much less TDS.

8. Factually, as regards Writ Petition (C) No. 753/2019 (***Satinder Singh Grewal v. Office of the Competent Authority (Land Acquisition)***), Mr. Zoheb Hossain, learned senior standing counsel appearing for the Income Tax Department, confirms that the TDS amount deducted by the Competent Authority Land Acquisition ('CALA') from the compensation paid to the Petitioner has been deposited with the Income Tax Department. Accordingly, a direction is issued to the Income Tax Department to refund the said sum deposited with TDS to the Petitioner not later than 31st May, 2019 failing which simple interest @ 6% p.a. will be paid on the said sum for the period of delay.

9. As regards Writ Petition (C) No. 13960/2018 (***M/s. Prem Sukh Bothra (HUF) v. Office of the Competent Authority (Land Acquisition) under the National Highways Act, 1956***) the stand of the NHAI is that it has deposited with the CALA the entire amount compensation amount without deducting TDS. It is stated on behalf of the NHAI that TDS, if any, has been deducted by CALA at its end. Mr. Hossain informs the Court that as far as the Income Tax Department is concerned, no TDS amount has been deposited with them as far as the amount payable to the Petitioners in WP(C) No. 13960/2018 is concerned. Therefore, with neither the NHAI nor the Income Tax Department being responsible for the mistake made by the CALA, no liability can be fastened on either of them.

10. In that view of the matter, a direction is issued to CALA to refund to the Petitioners in WP(C) No. 13960/2018 the TDS amount deducted on or before 31st May, 2019 together with simple interest at 6% p.a. from the date of deduction of the TDS amount till the date of payment, which should not be later than 31st May, 2019. If the refund is delayed beyond that period simple interest at 9% p.a. will be paid by the CALA on the said sum for the period of delay.

11. The Court clarifies that it is not expressing an opinion on whether the land acquired is agricultural land or not since that is not relevant to the issue at hand.

12. The petitions and pending applications are disposed of in the above

terms.

13. Order *dasti* be given to the parties under the signatures of Court Master.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 16, 2019
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