IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.1545 OF 2020

GANPAT RAMRAO TALEKAR
VERSUS
THE PRINCIPAL COMMISSIONER OF INCOME TAX AND OTHERS

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Advocate for Petitioner : Mrs. Laddha Rekha K. (Appointed)
AGP for Respondent/s-State : Mr. P. S. Patil.
Advocate for Respondent Nos.1 & 2 : Mrs. Bharaswadkar Patil Kalpalata

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CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.

DATE : 21.08.2021

<u>PER COURT</u> :-

1. After this matter was heard for quite some time on 20.08.2021 and again today, some startling features have been revealed.

2. In the entire petition, there is no pleading as to whether the deduction of Rs.26,894/- as T.D.S., by the acquiring body which paid the compensation of Rs.2,61,111/- to the petitioner towards compensation as his agricultural land was acquired for a public project, was with reference to the compensation

amount or the interest amount. Since the petitioner was not aware as to why the said amount was deducted, he had moved the respondent – Income Tax Authority. He was served with form 16A on 28.11.2017 when he came to know that the said deducted amount was towards T.D.S. Considering the contents of form 16A, he gathered an impression that the T.D.S. was deducted on the interest amount.

3. Mr. Patil, the learned AGP appearing on behalf of respondent No.3, with due persuasion could gather information from the said authority vide communication dated 20.08.2021 addressed to him, that the said amount was deducted to the extent of 10% of the agricultural land compensation amount (under the enhancement order) and the said deduction was not towards the interest amount accrued on the amount of compensation. He places a copy of the communication received by him on record, which is marked as 'X' for identification.

4. The learned advocate for the Income Tax Authorities submits that all along, the petitioner as well as the records indicated that the T.D.S. was towards the interest amount. It is

for the first time that it has been revealed in view of the communication 'X', that the T.D.S. was towards the compensation amount that was paid to the petitioner.

5. In ***Shamrao Sitaram Adhe Vs. The State of Maharashtra, Writ Petition No.2115 of 2011 decided on 20.09.2011***, the learned Division Bench of this Court has delivered an order. It was recorded in paragraph Nos.2 to 8 as under :

> *"2. By way of present petition, the petitioners have approached this Court being aggrieved by the action on behalf of Respondent No.2 in deducting 10% of the amount of compensation payable to the petitioners and crediting it with the Respondent No.3.*
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> *3. The lands of the petitioners has been acquired for the public purposes i.e. Ashti Hastur Tanda Minor Irrigation Tank and Ashti Percolation Tank. After the lands were acquired, the necessary proceedings for determination of compensation, passing of the Award were initiated by the Respondent No.2. However, when the Award was passed, 10% of the amount from the compensation was deducted by the Respondent No.2 and deposited with Respondent No.3. Being aggrieved by the said action, the petitioners have approached this Court.*
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> *4. It is the contention of the petitioners that since the lands of the petitioners which were acquired, were agricultural lands, they were not assessable to Income Tax and as such, the action on part of Respondent No.3 in deducting the amount from the compensation is not sustainable in law.*
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> *5. In the affidavit-in-reply filed on behalf of Respondent No.3, it is stated that in view of the Judgement of the Kerala High Court in the case of "Nalini vs. Deputy Collector, Land Acquisition" 294 ITR 0423 (Ker.) 2007, it is for the Income Tax Authorities to decide and determine whether the compensation awarded by the S.L.A.O. is in respect of an agricultural land as defined under the Income Tax Act or not.*

6. However, it has been stated by the Respondent No.3 in its affidavit-in-reply as under :

"I however, clarify that on examining the Award passed by the competent authority it does appear that the land in question which is situated at Ashti, Tq. Partur is an Agricultural land even U/Sec. 2(14)(iii)(A) of the Income Tax Act."

7. Without going into the legal aspects as to whether the judgment relied on by the Respondent No.3 is based on correct proposition of law or not, we find that in view of the statement on behalf of Respondent No.3 that the land in question is an agricultural land even under Section 2(14)(iii) (A) of the Income Tax Act, we find that it will not be appropriate to direct the petitioners to again go through the cumbersome exercise of making application to the Income Tax Authorities for refund of the amount. Admittedly, under the provisions of the Income Tax Act, the compensation received on account of acquisition of the agricultural land is not assessable to the Income Tax. The petitioners are poor farmers. If they are required to make application before the Income Tax Authorities, they would be required to engage the services of Chartered Accountants/Income Tax Practitioners, which would unnecessarily entail an expenditure for recovering the amount to which they are entitled in law.

8. In that view of the matter and peculiar facts involved in the present case, we allow the Writ Petition. The Respondent No.3 shall refund the amount deducted from the compensation payable to the petitioners while passing the Award and deposited with it by Respondent No.2. The Respondent No.3 shall refund to the Respondent No.2 the said amount with the interest accrued thereon in accordance with the provisions of relevant Act and Rules, within a period of six weeks from today. On receipt of the said amount, the Respondent No.2 shall refund the same to the respective petitioners within a period of four weeks from the receipt thereof. Rule is made absolute accordingly."

6. On 01.03.2018, the learned Division Bench of this Court dealt with a similar matter in ***Writ Petition No.4823 of 2013 filed by Urmila Sanjay Pawar and another Vs. The State of***

Maharashtra and by the order of the said date, the petition was allowed and the amount deducted by the Special Land Acquisition Officer as T.D.S. on the compensation amount shown in the award, was directed to be returned with interest at the rate of 15 % per annum to be calculated from the date of deduction. Liberty was granted to the State to proceed against the Income Tax Department, if the State has deposited the amount in the said Department.

7. In the case before us, the petitioner also hails from the same Aashti Taluka as like Shamrao Sitaram Adhe (*supra*). His land was also acquired for the construction of a percolation tank. The belief of the petitioner was that the deduction was towards the interest amount.

8. We quiet see from the factual matrix of this matter that the petitioner was ill advised and instead of putting forth the case of a refund as there cannot be tax deduction at source on the compensation amount paid for acquisition of an agriculture land, he moved applications under the R.T.I. and followed by which he filed applications before the Income Tax Authorities submitting his Income Tax Returns for the assessment year

2010-2011. In this backdrop, the petition before us, is purely on the ground of delay as the Income Tax Department would not accept Income Tax Returns beyond six (6) years from the date of the assessment year. Apparently, on an erroneous advise, the petitioner has been litigating with the Income Tax Department.

9. In view of the above, it is obvious that the path of litigation chosen by the petitioner was wrong. He was not required to tender his Income Tax Returns and that to on an advice that the T.D.S. was towards the interest amount purportedly paid to him. We are, therefore, disposing of this petition by giving a quietus to the litigation.

10. Keeping in view the law laid down by this Court in Shamrao Sitaram Adhe (*supra*) and Urmila Sanjay Pawar (*supra*), we find it appropriate to adopt the same view as has been taken by this Court in paragraph No.7 of the Shamrao's judgment (*supra*). We are also of the view that the petitioner, who is a poor farmer, should not be compelled to once again approach the Income Tax Authorities for the refund of his amount of Rs.26,894/- since it would be a cumbersome

exercise for him. He has already spent about 10 years in his endeavour to recover his amount of Rs.26,894/-. Hence, we are directing respondent No.1 to refund the amount of Rs.26,894/- with interest as is normally paid to an assessee, if excess Income Tax is paid. Such amount shall be paid to the petitioner, as expeditiously as possible and preferably on or before 30.10.2021.

11. Since the learned advocate for the petitioner was appointed through the High Court Legal Services Sub-Committee, Aurangabad, we quantify her fees at Rs.3,000/-.

(S. G. MEHARE, J.) **(RAVINDRA V. GHUGE, J.)**

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vmk/-