IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.NO. 4056 OF 2014

1.Srinivasan
2.Ekambaram
3.Rajagopalan
4.Sadasivam
5.Balasubramanian ...Petitioners

Vs

1.The Deputy Collector cum
Land Acquisition Officer,
Nagapattinam Collectorate Master Plan,
Nagapattinam.

2.The Revenue Divisional Officer,
Nagapattinam.

3.The Secretary,
Ministry of Finance (Income Tax),
Government of India,
New Delhi.

4.The Commissioner of Income Tax,
4, Williams Road,
Contonment,
Tiruchirapalli. ...Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, directing the respondents more particularly first respondent to consider the representation of the petitioners dated 09.04.2013 and dispose of the same by directing him to repay the amount of Rs.4,76,406/- deducted by the second respondent towards Tax Deducted at Source on the Land Acquisition compensation amount paid to the petitioner in respect of their land acquired for Nagapattinam Collectorate Master Plan with interest.

For Petitioner	:	Mr.S. Sounthar
For R1 & R2	:	Mr.Richardson Wilson, Government Advocate
For R3 & R4	:	M/s.Hema Muralikrishnan

ORDER

This Writ Petition has been filed for issuance of writ of mandamus, directing the first respondent to consider the representation of the petitioners dated 09.04.2013 and dispose of the same by directing him to repay the amount of Rs.4,76,406/- deducted by the second respondent towards Tax Deducted at Source on the land acquisition compensation amount paid to the petitioner in respect of their land acquired for Nagapattinam Collectorate Master Plan with interest.

2. Heard, Mr.S.Sounthar, learned counsel appearing for the petitioners, Mr.Richardson Wilson, learned Government Advocate appearing for the respondents 1 & 2 and M/s. Hema Muralikrishnan, learned counsel appearing for the respondents 3 & 4.

3. The case of the petitioners is that the petitioners owned agricultural punja lands. The said lands were acquired by the Government of Tamil Nadu for the purpose of putting up District Collectorate at Nagapattinam. As per the award passed in LAOP No.282 of 1999 on the file of the Sub Court, Nagapattinam, the compensation amount payable to the petitioners was determined as Rs.54,75,898/-, out of which a sum of Rs.16,05,869/- was already paid by the first respondent. While depositing the remaining amount, the second respondent deducted a sum of Rs.4,76,706/- towards income tax and only deposited the remaining amount after deduction at source. Form 16-A was also issued in favour of the petitioner. The compensation was paid as early as in the year 2008, the income tax was deducted and remitted into the account of Income Tax Department through the State Bank of India on 11.09.2008 itself.

4. The learned counsel for the petitioners would submit that admittedly the subject land is an agricultural land. As per Section 194LA of the Income Tax Act 10% of the compensation is deducted at source. However, the said provision is applicable only for land other than the agricultural land. The subject lands are classified as 'Punja' and hence it is an agricultural land. It will not attract the income tax and hence the deduction of tax at source had no sanction of law. Therefore, the petitioners made a representation to refund the tax deducted amount towards tax deducted at source.

5. The second respondent filed a counter stating that after acquisition of the land for construction of Collectorate, an award has been passed by the Acquisition Officer vide Award No.2 of 1999, dated 14.07.1999. Aggrieved by the same, the petitioners raised their objections and referred the case under Section 18 of the Land Acquisition Act. In LAOP No.282 of 1999

on the file of the Principal Sub Court, Nagapattinam, enhanced the award and awarded compensation of Rs.4,67,406/-. As per the guidelines issued by the Income Tax Department only the Land Acquisition Officer had deducted the income tax with reference to the rate of income tax at 10% of the income with 2% Cess has been calculated at Rs.4,67,406. Accordingly, the income tax has been deducted from the compensation payable and the remaining amount was remitted in the State Bank of India, Nagapattinam, as early as on 11.09.2008. Form 16-A was also issued to the petitioners for the purpose of filing income tax returns. It is further revealed that the first and second respondents have no authority for refund of income tax, even if the petitioners are entitled for refund of income tax.

6. The learned counsel for the third and fourth respondents submitted that the second respondent after deducting a sum of Rs.4,76,406/- towards tax deducted at source, the second respondent paid the same on 11.09.2008 as contemplated under Section 194 of the Income Tax Act. In respect of nature of the land whether the subject land is an agricultural land or urban land, the third and fourth respondents are not a competent person to hold. She further submitted that if the second respondent made such a request to refund the amount, they will take immediate steps to refund the same.

7. Admittedly, the subject land comprised in T.S.Nos.207 to an extent of 0.22455 sq.ft., 217 to an extent of 0.25945 sq.ft, 218 to an extent of 0.16692, 240 to an extent of 0.07405 sq.ft, 241 to an extent of 0.26174 sq.ft, 243 to an extent of 0.68856 sq.ft and 244 to an extent of 0.19445 sq.ft. are agricultural 'Punja' lands. While determining the compensation for the subject land, the second respondent had taken the subject land as agricultural punja land and determined the value of the subject land for compensation. Therefore, while determining the value of the land for compensation, the subject land had been considered as agricultural punja land and when the deposit of compensation, deducted a sum of Rs.4,76,406/- towards tax deducted at source and the subject land has been considered as house sites. The second respondent cannot have two stands for the same property.

8. In this regard, it is relevant to extract the provision under Section 194LA of the Income tax Act, which reads as follows :

> "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)]".

9. Thus, it is clear that it is applicable only to the land other than the agricultural land. Therefore, the compensation payable to the petitioners does not require any income tax payable by the petitioners, since the acquired land is an agricultural punja land. The petitioners are entitled to get back a sum of Rs.4,76,406/- which was deducted by the second respondent towards tax deducted at source.

10. In view of the above, the Writ Petition stands allowed. The first and second respondents are directed to disburse a sum of Rs.4,76,406/- towards tax deducted at source, which was paid by them to the third respondent towards tax deducted at source from the compensation payable to the petitioners within a period of four weeks from the date of receipt of a copy of this order. The respondents 1 and 2 are at liberty to take steps to get back the amount which was deposited towards tax deducted at source from the compensation amount payable to the petitioners from the third and fourth respondents thereafter. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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+1cc to M/s.Hema Muralikrishnan, Advocate SR.No.56042

+1cc to Mr.S.Sounthar, Advocate SR.No.56363

+1cc to to the Government Pleader SR.No.56701

W.P.No.4056 of 2014

GSM(CO)
RVM(01/12/2021)