IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201 **Civil Revision No.2201 of 2020 (O&M)**
Decided on : 13.09.2021

Haryana State Industrial & Infrastructure Development Corporation and another

... Petitioners

Versus

Lekh Ram (since deceased) through his L.Rs. and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms. Radhika Suri, Senior Advocate with
Mr. M.S. Kanda, Advocate for the petitioner (s).

Mr. Abhishek Yadav, Advocate
for respondent No.1 (i to iv).

Ms. Kirti Singh, DAG, Haryana
for respondent No.3.

Mr. Rajesh Bansal, Advocate for the applicants/proposes
respondents No.4 to 40 in CM-3739 & 3741-CII-2021.

G.S. Sandhawalia, J. (Oral)

CM-8229-CII-2020

Application has been filed for impleading the legal heirs of the deceased Lekh ram-respondent No.1, who had expired on 29.05.2020 leaving behind his legal heirs as mentioned in paragraph no.2 of the application. Application is supported by affidavit of the official.

Accordingly, the application is allowed. Legal heirs as mentioned in paragraph no.2 of the application are brought on record to pursue the present litigation only.

CM stands disposed of.

<u>CM-3739-CII-2021</u>

Application has been filed under Order 1 Rule 10 CPC for impleading the applicants as respondents No.4 to 40, who are landowners and affected by the stay granted as the Executing Court has stayed its hands before it in connected matters also.

Accordingly, in view of the averments made in the application, the same is allowed. Applicants as mentioned in paragraph no.9 of the application are impleaded as respondents No.4 to 40. Amended memo of parties is taken on record. Office to append the same at the appropriate place.

<u>Main case</u>

In the present revision petition filed under Article 227 of the Constitution of India, the petitioner-Corporation challenges the order dated 04.08.2020 (Annexure P-3) passed by the Executing Court, on account of the fact that directions were issued to deduct TDS only on interest income and not on additional/enhanced compensation. Further directions were made to submit the amended Form-D after deduction of TDS on the interest income only and not on the amount of enhanced compensation, which had been deposited by the judgment debtor, the petitioner-Corporation in January, 2020, but interest should be calculated beyond 15.08.2019 till the date of deposit.

2. Senior Counsel for the petitioner-Corporation has submitted that the Executing Court has not taken into correct consideration the binding precedent of the Apex Court in **'Union of India and others Vs.**

Hari Singh and others' (2018) 15 SCC 201 and also the judgment passed by this Court in **ITA No.204 of 2017 'The Commissioner of Income Tax (TDS) 1, Chandigarh Vs. M/s Dedicated Freight Corridor Corporation Limited'** and wrongly held that TDS is to be deducted under Section 194LA of the Income Tax Act, 1961 (for short '1961 Act') only on the component of interest.

3. As per provisions of Section 194LA, the person responsible for paying the compensation on account of compulsory acquisition under the law, is liable to deduct an amount equal to 10% of such sum as income tax except on agricultural land. It is further pointed out that as per Section 2 (14) (iii) part (a) & (b) of the 1961 Act, the definition of agricultural land has also been provided for. Therefore, while placing reliance upon the judgment of the Apex Court counsel has submitted that requisite inquiry as such as to whether the land is agricultural or not is to be done by the Income Tax Department. Senior Counsel has also pointed out that as per 194LA, no deduction is to be made where the amount is less than Rs.2,50,000/-.

4. A perusal of the provisions of Section 194LA and Section 2 (14) (iii) part (a) & (b) of the 1961 Act, would go on to show that there is sufficient force in the arguments raised by the Senior Counsel. The said section read as under:-

> "**Payment of compensation on acquisition of certain immovable property.**
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> 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 of such payments to a resident during the financial year does not exceed two lakhs and fifty thousand rupees:

Provided further 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."

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Section 2 (14) (iii) part (a) & (b):-

(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 ; or

b) in any area within the distance measured aerially,--

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or

> (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or
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> (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.
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> Explanation,-- For the purposes of this sub-clause, "population" means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year."

5. It is to be noticed that the Division Bench of this Court in the case of **'Risal Singh and another Vs. Union of India and others' (2010) 321 ITR 251** had issued directions under Section 194LA of the 1961 Act by directing that the Income Tax Department should refund the amount to the Collector and the Collector could not have made deduction without determining the jurisdictional fact that compensation was for property other than agricultural land.

6. The said view was not approved by the Apex Court in the case of **Hari Singh (supra)** wherein it was held that it is open to the landowners to approach the Assessing Officer to raise the issue that no tax is payable on the compensation/enhanced compensation, which was received by them on the ground that the land was agricultural in nature. It is also relevant to notice that the Apex Court had upheld the view of the Kerala High Court in the case of **'Nalini Vs. Deputy Collector' 2006 SCC Online Kerala 444**, wherein also a similar issue had arisen. The Kerala High Court had held that the remedy available to the party was to approach the competent authority under Section 197 of the 1961 Act or

pay the income tax and get it refunded. It was further held that Land Acquisition Court had no jurisdiction to decide the issue which is to be decided by the Income Tax Officer whether the land acquired was agricultural land or not. Relevant portion of the judgment of the Apex Court passed in the case of **Hari Singh (supra)** reads as under:-

> "7. We find force in the submission of the learned Additional Solicitor General insofar as the challenge to the direction given to the Land Acquisition Collector to determine as to whether the land in question is agricultural land or not. Since the Land Acquisition Collector had already deducted tax at source and deposited with the Income Tax Department, in such circumstances, better course of action, which is in consonance with the provisions of Income Tax Act, is for the respondents to approach the concerned Assessing Officer(s) and to raise the issue that no tax is payable on the compensation/enhanced compensation which is received by them as their land was agricultural land. Once such an issue is raised before the Assessing Officer(s), it is for the Assessing Officer(s) to examine the facts of each case and then apply the law as contained in the Income Tax Act to determine the aforesaid question. Insofar as these cases are concerned, we allow these appeals by setting aside the directions contained in paragraph 7 and substitute the same with the following directions:
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> 7.1 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.

7.2 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 *CIT v. Ghanshyam* in order to ascertain whether the interest given under the said provision amounts to compensation or not.

7.3 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.

7.4 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.

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

7. Counsel for the landowners are not in a position to show that there is a divergent view by the Apex Court as such. Thus, this Court is of the opinion that the Executing Court as such has mis-read the said judgment which is directly applicable which has already been reproduced above.

8. Similarly, the order of the Division Bench has been rightly distinguished by noting that it was an issue on the payment which had been made under Section 23 (1A) of the 1894 Act and it was wrongly mentioned as interest in the Award of the competent authority and, thus, there was reference to Section 194LA.

9. Form-D which was submitted before the Trial Court has also been examined by this Court, which goes on to show that there are considerable number of landowners, whose final enhanced compensation amount is below Rs.2,50,000/- as per the first proviso of Section 194LA and, therefore, in those set of cases, it would not be necessary as such to deduct the TDS amount.

10. It is not disputed that during the arguments it was noticed that amount of TDS was not deposited with the Income Tax Department, but has been deposited with the Executing Court, which was to the tune of Rs.80 crores in two installments of Rs.50 crores and Rs.30 crores, respectively.

11. Accordingly, the petitioner-Corporation as such shall submit the amended Form-D showing the deduction of TDS regarding the landowners who have been paid more than Rs.2,50,000/- in aggregate and wherever the amounts are less than that the same shall not be liable to be deducted by the Corporation.

12. Keeping in view the above, this Court is of the opinion that the impugned order dated 04.08.2020 (Annexure P-3) is liable to be modified. It has already been pointed out that apart from the present case

of one landowner, a sum of Rs.50 crores was deposited on 16.12.2019 and another sum of Rs.30 crores was deposited on 05.03.2020 with the Executing Court for the land acquired of other landowners. The TDS has to be deducted from the said amount and the same has to be forwarded to the Income Tax Department where the landowners are recovering the amounts above Rs.2,50,000/-. The Corporation shall accordingly furnish amended Form-Ds' showing its lability of interest till January, 2020 and TDS shall not be shown as deducted from landowners whose compensation amount is less than Rs.2,50,000/-.

13. Accordingly, the Executing Court shall, thus, disburse the amount to the landowners after deducting TDS and forward the deducted amount to the Income Tax Department only in case where the amount of compensation exceeds Rs.2,50,000/- as per the first proviso of Section 194LA. It is open to such landowners to seek refund of the amount in accordance with law, before the Income Tax Department, wherein the compensation is above Rs.2,50,000/-.

14. The Executing Court shall also take into consideration the observations made herein regarding other amounts which have been deposited by the Collector, of the other landowners while satisfying the awards regarding the acquisition in question.

15. The revision petition stands disposed of with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

September 13, 2021
Naveen

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No