

आय अधकरण, "सी+यायपीठ, चेन्नई
PELLATE TRIBUNAL 'C' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No. 835/Mds/2017

अंशधारण वर्ष/Assessment Year:2008-09

The Income Tax Officer,
TDS Ward,
Salem.

The Deputy Chief Engineer
Vs. (Construction),
Salem Railway Division, Salem.

[TAN:CHED05218-D]

(अपीलाथ /Appellant)

(प्रत्यथ /Respondent)

अपीलाथ का ओर से / Appellant by : Shri Asish Tripathi, JCIT
प्रत्यथ का ओर से/Respondent by : Ms. G. Vardhini Karthik, Advocate
सुनवाई का तारख / Date of hearing : 29.08.2017
घोषणा का तारख /Date of Pronouncement : 21.09.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals), Salem dated 23.01.2017 for the assessment year 2008-09. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in holding that the TDS is not deductible under section 194LA of the Income Tax Act, 1961 [Act+in short] by treating the impugned land as agricultural land.

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It is submitted that the deductor, the Deputy Chief Engineer (Construction) [WCE+ in short], acquired land through Revenue Department of Tamil Nadu State Government for laying Salem-Karur Broad Gauge Railway Line Project, Namakkal during the financial year 2007-08. The land was acquired from various land owners as per award passed by the Commissioner of Revenue Administration, Chennai. Against the award passed by the Commissioner of Revenue Administration, the land owners filed appeal in the Subordinate Judge Court, Namakkal, which was passed an order of enhancing the compensation. Aggrieved by this order, the land owners filed various cases before the Honble Madras High Court and the Honble High Court has awarded further enhancement of compensation to the land owners in AS No. 823/2003 to 842/2003 and 4 other batch of the cases vide its order dated 20.03.2017 & 17.04.2017. On the above enhanced compensation amounting to .18,96,49,045/-, which was deposited in the Sub-Court, Namakkal, the TDS determined by the Assessing Officer was .1,95,33,851/- under section 194LA of the Act at the rate of 10.30% of the compensation. Immediately after the award of enhanced compensation, the Department approached the deductor requesting deduction of TDS under section 194LA of the Act before making the payments to the land owners. On being default in deducting TDS before releasing compensation amount, against the show caused notice, it was submitted before the Assessing Officer that the enhanced compensation

49,045/- was deposited in the Honble Sub-Ordinate Judge, Namakkal was done due to the cheque drawn in favour of the Honble Sub-ordinate Judge, Namakkal only and the cheque issued by the Finance was based on the working sheet submitted by the Special Tahsildar (LA), Namakkal duly recommended and forwarded, and it was due to non furnishing of recovery towards TDS by the Special Tahsildar (LA), Namakkal, which was due to unawareness of the Income Tax Act. Accordingly, the Assessing Officer levied the TDS and raised the demand protectively to the DCE under section 201(1) of the Act of ₹.1,95,33,851/- along with interest under section 201(1A) of the Act of ₹.1,56,27,080/-.

3. The deductor carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts and circumstances, the Id. CIT(A) held that the tax is not deductible under section 194LA of the Act and allowed the appeal.

4. Aggrieved, the Revenue is in appeal before the Tribunal and the contention of the Department is that the land acquired in Kosavampatti village falls within the municipality as per notification under section 2(1A)(C) proviso Clause (II)(B) and section 2(114)(III)(B) urbanization areas No. SO 9947 file No. 164/3/87-ITA.I dated 06.01.1994. Therefore, the Id. DR has pleaded the order of the Id. CIT(A) should be reversed and restored that of

other hand, the Id. Counsel for the assessee strongly supported the order passed by the Id. CIT(A).

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. Through the Revenue Department of Tamil Nadu State Government, the Railways acquired land at Namakkal Town & Kosavampatti for laying Salem-Karur Broad Gauge Railway Line Project, Namakkal. In connection with land acquisition, the Hon^{ble} Madras High Court has awarded enhanced compensation to the land owners and as per the directions of the Hon^{ble} High Court, the said compensation was drawn by cheque and deposited to Hon^{ble} Sub-ordinate Judge, Namakkal. Since the TDS was not effected on the compensation amount, the Assessing Officer levied tax under section 201(1) as well as interest under section 201(1) of the Act. As per the letter of the Special Tahsildar, Salem Karur New BG Line Project, Namakkal date 23.12.2016, the land acquired for the above said project was agricultural land. Further, as per notification under section 2(1A)(C) proviso Clause (II)(B) and section 2(114)(III)(B) urbanization areas No. SO 9947 file No. 164/3/87-ITA.I dated 06.01.1994, the areas upto a distance of 2 kms from the municipal limits in all directions of Namakkal will only come under the limits of municipality or cantonment board and the Kosavampatti village does not fall within the notified area. Over and above, as per section 10(37) (iii) and (iv) of the Act, if

ulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India and income has arisen from the compensation or consideration for such transfer received by the assessee on or after the 1st day of April, 2004 is exempt. In this case, the compulsory acquisition was done by the Southern Railways, which is an organization of the Central Government and acquired the land during the financial year 2007-08 relevant to the assessment year 2008-09 through Revenue Department of Tamil Nadu State Government. As per the letter dated 23.12.2016 of the Special Tahsildar, Salem Karur New BG Line Project, Namakkal, the impugned land which are located in and around Namakkal District are purely agricultural land at the time of acquisition. Thus, the Id. CIT(A) has held that tax is not deductible under section 194LA of the Act.

6. Whether the land in question used for agricultural purpose or not is not the material for determining the question as to whether the land was agricultural land or not. In the case of CIT Vs Officer-in-charge [Court of Wards] (105 ITR 133), Hon'ble Supreme Court held that agricultural land must be a land which could be said to be either actually used or ordinarily used or meant to be used for agricultural purposes, and determination of the character of land, according to the purpose for which it was meant or set apart and can be used, is a matter of which

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the facts of each particular case. In the present case there was no doubt whatsoever, on the nature of the land being agricultural land before it was acquired by the Railways as per the certification of the Special Tahsildar, who is the ultimate authority of Revenue Department of the Tamil Nadu State Government. Further, in this case, the compulsory acquisition was done by the Southern Railways, which is an organization of the Central Government and acquired the land through Revenue Department and as per section 10(37) (iii) and (iv) of the Act, no tax could be demanded over and above the statute. Under the above facts and circumstances, the Id. CIT(A) has rightly held that no tax is deductible under section 194LA of the Act and the same stands confirmed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 21st September, 2017 at Chennai.

Sd/-
(A.MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, 21.09.2017

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रशासक/DR & 6. गार्डफाईल/GF.