



CWP-14794-2016 (O&M) and connected case

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201 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Reserved on: 01.08.2024

Date of Decision: 09.08.2024

1.

CWP-14794-2016 (O&M)

THE LAND ACQUISITION OFFICER, URBAN ESTATE

. . . . Petitioner

Vs.

THE ASSISTANT COMMISSIONER OF INCOME TAX, TDS CIRCLE

. . . . Respondent

2.

CWP-14811-2016 (O&M)

THE LAND ACQUISITION OFFICER, URBAN ESTATE

. . . . Petitioner

Vs.

THE ASSISTANT COMMISSIONER OF INCOME TAX, TDS CIRCLE

. . . . Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Ms. Radhika Suri, Sr. Advocate with
Mr. Abhinav Narang, Advocate
Ms. Parnika Singla, Advocate
for the petitioner(s).

Mrs. Urvashi Dhugga, Sr. Standing Counsel
for the respondent/Revenue.

SANJEEV PRAKASH SHARMA, J.

1. Present writ petition has been preferred by the Land Acquisition Officer, Urban Estate, Panchkula, office of the Government of Haryana challenging the imposition of huge liability of an amount of Rs.1,28,19,35,845/- under Section 201(1) of the Income Tax Act, 1961

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(hereinafter referred as 'Act, 1961') on the ground that the Land Acquisition Officer (hereinafter referred as 'LAO') had failed to deduct the tax at source upon interest on enhanced compensation paid under Section 28 of the Land Acquisition Act, 1894 (for short 'the Act, 1894').

2. Brief facts are that the petitioner was conducting the duty of disbursement of compensation, enhanced compensation and interest on the compensation in lieu of acquisition of land in terms of Section 28 of the Act, 1894. The compensation received for acquisition of agricultural land is exempted from deduction of tax at source in terms of Section 194LA of the Act, 1961. Till 2012, the petitioner was disbursing the enhanced compensation and interest on enhanced compensation by deducting tax at source in terms of Section 194A of the Act, 1961.
3. In the case of *CIT vs. Ghanshyam (HUF) 315 ITR 1*, the Supreme Court while interpreting the provisions of Section 45(5)(b) of Act, 1961 held that the interest on enhanced compensation paid under Section 28 of Act, 1894 is part of the compensation and therefore, not liable for deduction of tax at source as the same would be held to be an accretion to capital. The High Court also passed orders in the case of *Jagmal Singh and another vs. State of Haryana and another in CR No. 7740 of 2012* restraining petitioners from deducting TDS. Accordingly, TDS was not being deducted upon interest disbursed on enhanced compensation in view of various judgments passed by the High Court,



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and therefore, after October, 2012, the LAO stopped deducting TDS in view of the High Court's order.

4. A survey under Section 133A of the Act, 1961 was conducted on 16.03.2015 and the income tax authorities raised queries with regard to non-deduction of tax at source on the payments of interest on compensation/enhanced compensation. Judgments and orders passed by the High Court were therefore, made available to the respondent/department whereafter a questionnaire was put to the petitioner with regard to deduction of tax at source. It was queried that income by way of interest received on compensation/enhanced compensation would form part of the income from other sources in terms of Section 56(2)(viii) of Act, 1961 and therefore, TDS was required to be deducted and deposited, to which it was answered by the petitioner as under:

"We were deducting TDS upto September, 2012 on payment of interest on compensation/enhanced compensation u/s 194A. But various landholder whose land was acquired started filing legal cases with various courts including Hon'ble High Court for refund of TDS deducted from that payment i.e. interest payments. As per instruction from Sh. M.S. Sangwan, DRO vide order dated 09.10.2012 on the noting sheet (copy of it being provided), I was directed "As per opinion of ADA (P), therefore, TDS may not be deducted". This view of DRO was based on ADS (P) opinion as well as various court decisions on section 28 of the Land Acquisition Act, 1894 wherein it has been held in one of the cases CIT Vs Ghanshyam (HUF) that interest u/s 28 of the Land Acquisition Act, 1894, unlike interest u/s 34 is an accretion to the value, hence, it



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is a part of enhanced compensation or consideration. Copy of order is given to you.

Further, in the case of Sh. Satpal & others Vs. St. of Haryana, ADJ, Faridabad, has held that Joint Defendant (JDA) have illegally deducted Income Tax(TDS) out of compensation amount and JD's (LAO) are directed to pay the same to the landowner i.e. refund the TDS vide order dated 20.09.2014. This decision has been relied on HUDA v/s Mandir Nar Singh Puri & others."

5. Learned counsel for the petitioner submits that the petitioner was in *bona fide* belief that there is no liability to deduct tax at source in view of the legal opinion of the Additional District Attorney. Show cause notice was served upon the petitioner for treating him as assessee in default, and assessment was finalized on 22.03.2016 treating the petitioner as assessee in default under Section 201 and 201(1A) of the Act, 1961. Separately, a notice under Section 156 of the Act, 1961 was also issued directing the petitioner to deposit a sum of Rs.1,28,19,35,845/-. The petitioner has therefore, preferred the present petition.
6. Learned counsel for the petitioner submits that the petitioner cannot be penalized for failure of TDS. It has been vehemently argued that no TDS was deductible on the interest of enhanced compensation for the relevant period. Further, it is stated that the Income Tax Department filed review applications seeking review of the orders passed by the High Court restraining from deducting TDS on interest received on enhanced compensation, and the same were subsequently decided on 02.02.2016.

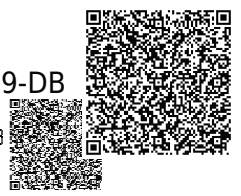
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7. Learned counsel therefore submits that the petitioner cannot be penalized, and the order dated 22.03.2016 passed by the respondent for Assessment Year 2015-16 imposing huge liability of Rs.1,28,19,35,845/- was unjustified.
8. On the other hand, learned counsel appearing for the Department/Assistant Commissioner of Income Tax, TDS Circle has vehemently argued, and has also submitted written arguments in support of the order impugned. It is stated that the LAO working on behalf of HUDA (Haryana Urban Development Authority) was debarred from withholding tax from all the assesses whose land was compulsorily acquired. It is further submitted that the HUDA was required to contact the Income Tax department as amendments were made in the Act in 2002.
9. Learned counsel for the Revenue also submits that the Income Tax Department was not a party to the case of *Jagmal Singh and another vs. State of Haryana and another in CR No. 7740 of 2012* in the High Court, wherein the interim order was passed. It was further argued that review petition was filed in the year 2014 seeking review of the High Court's order by the respondent, and at the same time, Field Officers and Officers working in the system came to know that the banks had huge deposits of money without corresponding TDS reflecting in their accounts.
10. Learned counsel for the Revenue also relies upon the judgment passed in *Attar Singh and others vs. State of Haryana and others in CWP No.10125 of 2015, decided on 03.09.2015*.



11. Learned counsel relies upon Section 4(1) of the Act, 1961, which relates to charge of income tax, and as per section 4(2), the income tax was required to be deducted at source. Therefore, it is submitted that the petitioner/LAO who was disbursing the compensation on behalf of HUDA was a 'person' and was required to deduct tax at source in terms of Section 4 read with section 2(31)(vi) of the Act.
12. Learned counsel submits that in the case of *CIT vs. Bir Singh (HUF)*, *ITA No.209 of 2004, decided on 27.10.2010, Manjet Singh (HUF) Karta Manjeet Singh vs. Union of India and others, CWP No.15506 of 2013 decided on 14.01.2014*, the High Court held that additional compensation and interest are liable to tax as per Section 45(5)(b) and also as per section 2(28A) which defines interest. It is stated that the petitioner had wrongfully unilaterally decided to withhold tax and therefore, was liable to penalty under section 201 of the Act.
13. It was further submitted that the review applications filed in the cases of *Jagmal Singh and another vs. State of Haryana and another in CR No. 7740 of 2012, Satbir Singh vs. State of Haryana and another in CR No. 7736 of 2012* were allowed and the order was recalled holding that interest on additional award is taxable and income tax is liable to be deducted at the time of deposit. The order has been passed in review applications on 02.02.2016 and therefore, the petitioner was liable to pay interest under section 201(1A) of the Act.
14. Learned counsel for the Revenue relies upon earlier judgment of *Bikram Singh and others vs. Land Acquisition Collector and others, 1997 (10) SCC 243, CIT vs. Bir Singh (supra), Manjet Singh (HUF)*

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Karta Manjeet Singh (supra), and prays for dismissal of the writ petition.

15. *Actus Curiae Neminem Gravabit*, namely, no party should suffer due to the act of the Court.
16. The aforesaid maxim is the complete answer to the issue raised in the present petitions. It is an admitted position that on the day when the Land Acquisition Officer was disbursing the interest element on enhanced compensation to the concerned landowners whose lands have been acquired, litigation had been taken up before the Court with regard to the action of the LAO in deducting TDS upon such interest upto September, 2012 under Section 194LA of the Act, 1961.
17. It is also an admitted position that various Courts including this High Court granted stay and also held that TDS is not required to be deducted from the interest payments. The LAO asked for a legal opinion and as per the instructions dated 09.10.2012 issued by the District Revenue Officer on the noting sheet, he was directed that “*as per the opinion of the ADA(P) i.e. Additional District Attorney, TDS may not be deducted*”. The document was produced by the petitioner before the Income Tax Authorities. In terms of directions issued by the superior officer, the deductions were therefore not made.
18. In the case of *Sh. Satpal & others Vs. St. of Haryana*, Additional District Judge, Faridabad held that the deduction of TDS was illegal and the LAO was directed to pay the same to the landowners vide order dated 20.09.2014. In another case of *HUDA v/s Mandir Nar Singh Puri & others, C.R. No. 7953 of 2013*, decided on 21.12.2013,



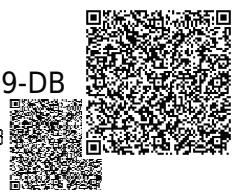
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the High Court passed orders of restraining from deduction of TDS. Thus, it is apparent that the TDS deductions were not made based on orders of the Court. It is also noticed that orders passed by the High Court were later on reviewed at the instance of the Income Tax Department.

19. Learned counsel for the Revenue has attempted to submit that there were other judgments of the High Court wherein a different view had been taken holding that TDS can be deducted (as referred supra). However, she does not deny that the LAO and his department had at the time of enquiry submitted the reasons for non-deduction of TDS as noticed by this Court hereinabove. Therefore, it cannot be said that the LAO was at fault. He was genuinely following the advice given to him by his superior officer who was a District Revenue Officer, whose directions of not deducting TDS were based on legal advice. The legal advice was given on the basis of the directions of this Court. While this Court may have passed order which was not in conformity with some other orders passed by the High Court, it was not available for the LAO to ignore or flout the Court's orders, which are to be presumed to be correct till they are set aside in appeal. Thus, no fault can be attributed on the LAO or on his officials.

20. In the absence of there being any fault and there being a genuine belief based on judgment of the High Court that TDS was not required to be deducted on the interest paid, the action of the LAO cannot be said to be wrongful or illegal. The action of releasing the interest amount without deducting TDS therefore, cannot be a reason for imposing



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penalty in terms of Section 201 and 201(1A) of the Act, 1961 and cannot be justified.

21. The Land Acquisition Officer cannot be made to suffer on account of the orders passed by the Court. Penalty imposed on him by the Assistant Commissioner of Income Tax, TDS Circle vide its orders dated 22.03.2016 and 31.03.2016 are liable to be set aside.

22. Accordingly, these writ petitions are *allowed*. The orders dated 22.03.2016 (Annexure P-5 in CWP-14794-2016) and 31.03.2016 (Annexure P-5 in CWP-14811-2016) passed by Assistant Commissioner of Income Tax, TDS Circle are quashed and set aside. If any amount has been deposited, the same shall be refunded to the petitioner along with interest @6% per annum.

23. No costs.

24. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

August 09, 2024

Mohit goyal

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| 1. Whether speaking/reasoned? | <i>Yes/No</i> |
| 2. Whether reportable? | <i>Yes/No</i> |

