Abdul Rasheed Vs. District Collector

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Court : Kerala

Decided On : Dec-19-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Abdul Rasheed

Respondent : District Collector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON THURSDAY, THE19H DAY OF DECEMBER201328TH AGRAHAYANA, 1935 WP(C).No. 31747 of 2013 (P) --------------------------- PETITIONERS : ----------- 1. ABDUL RASHEEDAGED52YEARS, S/O. MOHAMMED KUNJU, NELLUKADAYIL VEETTIL, KADAYIL VILAKATHU,NEMOM DESOM, NEMOM VILLAGE.

2. MUMTAZ, AGED47YEARS,W/O. ABDUL RASHEED, NELLUKADAYIL VEETTIL, KADAYIL VILAKATHU, NEMOM DESOM, NEMOM VILLAGE. BY ADVS.SRI.R.T.PRADEEP SRI.P.BIJIMON RESPONDENTS : ----------- 1. DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION, KODAPPANAKKUNNU, THIRUVANANTHAPURAM69500.

2. SPECIAL TAHSILDAR LA (NH), LAND ACQUISITION OFFICER, OFFICE OF THE SPECIAL TAHSILDAR LA (NH) PMG, THIRUVANANTHAPURAM69500.

3. COMMISSIONER OF INCOME TAX (TDS), OFFICE OF THE COMMISSIONER OF INCOME TAX, KOWDIAR, THIRUVANANTHAPURAM - 695004. R1 & R2 BY SR GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN R3 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1912-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: BP WP(C).No. 31747 of 2013 (P) APPENDIX PETITIONER'S EXHIBITS : P1: COPY OF NOTICE DT263/2013 TO1T PETITIONER. P2: COPY OF NOTICE DT244/2013 TO1T PETITIONER UNDER RULE11(2). P3: COPY OF NOTICE DT263/2013 TO1T PETITIONER P4: COPY OF NOTICE DT263/2013 TO2D PETITIONER. P5: COPY OF NOTICE DT244/2013 TO PETITIONES1& 2 UNDER RULE112). P6: COPY OF

JUDGMENT
DT238/2013 WPC NO. 20572/2013. P7: COPY OF

JUDGMENT
DT411/2013 IN WPC NO. 26926/13. RESPONDENT'S EXHIBITS : NIL. //TRUE COPY// P.A. TO JUDGE BP P.R.RAMACHANDRA MENON, J.

- W.P.(c) No.31747 OF2013- Dated this the 19th day of December, 2013

JUDGMENT
Is income tax liable to be deducted from the sale consideration payable to the petitioners on negotiated sale of an immovable property, forms the issue to be considered.

2. An extent of 0.41 Ares comprised in Re.Sy.No.902/7 of Nemom Village with the building involved in LAC No.170 belonging to the petitioners who are husband and wife was transferred to the Government for widening of Karamana- Kalikkavila road. The petitioners are apprehensive of deduction of income tax and has filed the writ petition for a direction to disburse the whole of the sale consideration without any deduction what so ever. Reliance is placed on Infopark Kerala v. Asst. Commissioner of Income Tax [2008 (4) KLT782 to contend that such deduction is warranted only when there is a compulsory acquisition.

3. The respondents do concede that income tax is not liable to be deducted under Section 194LA of the Income Tax Act, 1961 W.P.(C)No.31747/2013 2 ('the Act' for short) when the price is fixed by negotiation and not through land acquisition. But the respondents maintain that tax is liable to be deducted under Section 194 IA of the Act effective from 1.6.2013 though not under Section 194 LA of the Act. The respondents point out that the property agreed to be transferred is not an agricultural land and that the sale consideration exceeds ` 50 lakhs attracting the rigour of Section 194 IA of the Act.

4. Heard Sri.Jose Joseph, Standing Counsel for the Income Tax Department as well.

5. Section 194 IA of the Act is as follows:- "194IA. Payment on transfer of certain immovable property other than agricultural land -(1) Any person, being a transferee, responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or 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 one per cent of such sum as income-tax thereon. (2) No deduction under sub-section (1) shall be made W.P.(C)No.31747/2013 3 where the consideration for the transfer of an immovable property is less than fifty lakh rupees. (3) The provisions of section 203A shall not apply to a person required to deduct tax in accordance with the provisions of this section. Explanation:-For the purpose of this section, - (a) "agricultural land" means agricultural land in India, not being a land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2; (b) "immovable property" means any land (other than agricultural land) or any building or part of a building." 6. Section 194 IA of the Act has been introduced with effect from 1.6.2013 by the Finance Act, 2013 in order to have a mechanism for reporting of transactions in the real estate sector and to collect tax at the earliest point of time. It provides that every transferee at the time of making payment of or crediting any sum as consideration for transfer of immovable property to a resident transferor shall deduct tax. Such deduction at the rate of 1% of the sum as consideration will be

applicable only if the property is not an agricultural land and the total sale consideration is ` 50 lakhs or more. The property in the instant W.P.(C)No.31747/2013 4 case is not an agricultural land going by Explanation (a) to Section 194 IA of the Act aforequoted.

7. Explanation (a) to Section 194 IA of the Act clarifies that 'agricultural land' means agricultural land in India, not being a land situated in any area referred to in items (a) and (b) of sub- clause (iii) of clause (14) of Section 2. Section 2(14) (iii) (a) & (b) can be profitably extracted hereunder:- "2(14) "capital asset" means property of any kind by an assessee, whether or not connected with his business or profession, but does not include - (i) x x x x x x x (ii) x x x x x x x (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 (according to the last preceding census of which are relevant figures have been published before the first day of the previous year) ; or (b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette; " W.P.(C)No.31747/2013 5 It is unnecessary to probe in to the nature of the property in order to decipher as to whether the same is an agricultural land or not in the context. Such land situated within the jurisdiction of a Municipality or a Municipal Corporation is not to be treated as an 'agricultural land' in terms of Explanation (a) to Section 194 IA of the Act.

8. What survives for consideration is as to whether the total sale consideration agreed upon for the transfer of the property exceeds ` 50 lakhs in order to attract the rigour of Section 194 IA of the Act. The petitioners are fully justified in their contention that tax is not liable to be deducted at the rate of 10% of the sum as consideration under Section 194 IA of the Act, since there is no land acquisition. But tax is certainly liable to be deducted from the sale consideration payable to the petitioner at 1% of the sum under Section 194 IA of the Act since the total sale

consideration exceeds ` 50 lakhs. The obligation to deduct tax under Section 194 IA of the Act arises when consideration is payable to a resident transferor on the transfer of immovable property otherwise than by land acquisition. It is upto the petitioners to submit return before the jurisdictional assessing W.P.(C)No.31747/2013 6 officer and take the proceedings to a logical end in the determination of tax liability. The dictum in Inforpark Kerala's case as affirmed in W.A.No.2243/2008 is clearly distinguishable in as much as the same dealt with the deduction of tax under Section 194 LA of the Act in the absence of a compulsory acquisition.

9. The District Collector and the Special Tahsildar (Land Acquisition) are therefore directed to disburse the sale consideration to the petitioners after deducting income tax @ 1% of the sum under Section 194 IA of the Act. The Writ Petition is allowed in part. No costs. P.R.RAMACHANDRA MENON JUDGE sv.