IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1049 OF 2021

Seema Jagdish Patil,
704-705, Saya Park, Pakhadi,
Kharigaon, Kalwa, Thane – 400 605. ... **Petitioner**

Versus

1. The National Hi-Speed Rail
   Corporation Ltd., 1105-1106
   Universal Magestic, P. L.
   Lokhande Marg, Chembur (West),
   Mumbai- 400 013.

2. The Principle Commissioner of
   Income Tax-1, Thane; having office at
   6th Floor, Asher IT park, Road No.16,
   Wagle Ind. Estate, Thane (West),
   Thane – 400604.

3. The Commissioner of Income Tax
   (TDS)-2, Mumbai, having office at
   Ayurved Prachar Sanstha Building,
   Charni Road, Mumbai – 400 012.

4. Union of India,
   Through the Secretary,
   Ministry of Railways,
   Government of India,
   North Block, New Delhi - 110001 ... **Respondents**

Mr. Devendra Jain, Advocate for the Petitioner.
Adv. Akshaya Puthran, Adv. Nayantara Bhattacharyya i/b. S. K. Singhi & Co., LLP Advocates, Advocate for the Respondent No.1/National High Speed Rail Corporation.
Mr. Suresh Kumar a/w. Ms. Sumandevi Yadav, Advocate for the Respondent Nos.2 and 3.

CORAM: S.V. GANGAPURWALA &
M. G. SEWLIKAR, JJ.

RESERVED ON : MAY 4, 2022
PRONOUNCED ON : JUNE 9, 2022

JUDGMENT : (Per – S.V.GANGAPURWALA, J.)

1. Rule. Rule made returnable forthwith by consent of the parties.

2. The petitioner assails an action on the part of the respondent No.1 in deducting income tax at source from the compensation paid to the petitioner by the respondent No.1 for the acquisition of his land.

3. The petitioner claims to be the owner of certain plots of land situated at Bhiwandi, Thane. The respondent No.1 acquired the land of the petitioner purportedly under an agreement. The respondent No.1 deducted income tax at source from the compensation paid to the petitioner. The same appears to have been deducted on 23rd October 2019. On or about 8th May 2020, a supplementary deed was entered into between the petitioner and the respondent under which some additional amount was paid to the petitioner and income tax was deducted at source from the said part of the compensation also. On or about 4th December 2020, the petitioner requested the respondent No.1 to reverse the tax deducted at source on the ground that no tax was deductable. On or about 24th December 2020, the respondent No.1 replied to the petitioner that exemption from income tax is not applicable in case of the land acquired from the petitioner and in any case, the income tax deducted at source from the petitioner was duly deposited with the Income Tax Department.

4. The learned Advocate for the petitioner submits that Section 96 read with Section 46 of the Right to Fair

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as '**the Act, 2013**") specifically exempts payment of income tax on an amount of compensation paid under the award and/or agreement.

5. The learned Counsel submits that Section 46 of the Act, 2013 is not applicable in the present matter as the land is not purchased by a specified person. The learned Counsel submits that the respondent No.1 ought not to have deducted the tax at source because the deduction of tax at source is applicable only where the amount is taxable in the hands of the recipient.

6. The learned Counsel further submits that no distinction is made between the compulsory acquisition resorting to the provisions of the Act, 2013 by issuing notification or by an acquisition through an agreement. The learned Counsel to buttress his submission relied upon the judgment of the Apex Court in the case of ***Balkrishnan Versus Union of India***[1]. Further reliance is placed on the judgment of the Division Bench of Kerala High Court in the case of ***K. Sreekumar Versus District Collector***[2]. Reliance is also placed upon the CBDT Circular dated 25th October 2016 to contend that the Central Board has also clarified that the compensation received in respect of award or agreement is exempted from levying of income tax vide Section 96 of the Act, 2013 and shall not be taxable under the provisions of the Income Tax Act, 1961 (hereinafter referred to as, "**IT Act**"), even if there is no specific provision of exemption for

1 (2017) 80 taxmann.com 84 (SC).
2 Writ Application No. 1422 of 2015, dt. 18th January 2018.

such compensation in the IT Act. It is further submitted that as the respondent No.1 was not supposed to deduct the tax at source, it is the respondent No.1 who should furnish a correction statement for rectification of the mistake. The learned Counsel relies upon Section 200 (3) of the IT Act. According to him, under Section 200(3), the deductor can furnish a correction statement for rectification. Section 200A (1) of the IT Act provides for processing of statement of tax deducted at source furnished by the deductor. Sub-clause (d) of Clause (1) of Section 200A of the IT Act, further provides for refund of excess tax deducted at source by the deductor. It is submitted that after processing the statement or correction statement furnished by the deductor, the refund can be granted. The respondent No.1 be directed to furnish the correction statement of the tax deducted at source and the amount deducted be paid to the petitioner.

7. The learned Advocate for respondent No.1 submits that amount received by the petitioner pursuant to an agreement is taxable. The acquisition is by an agreement between the parties and cannot be said to be compulsory acquisition under the Act, 2013. Hence, the income tax at source is deductable. The learned Advocate further submits that the sale deed was entered between the petitioner and respondent No.1 by negotiation through direct purchase method, the tax was duducted as per the Income Tax Rules. The deducted tax has already been deposited in the Income Tax Department. The TDS certificate [Form 16(b)] is also provided to the petitioner.

8. The learned Counsel for respondent Nos.2 and 3 also submits that Section 96 of the Act, 2013 is not applicable to the acquisition under direct purchase. Section 96 would apply if the acquisition is through declaration of an award by the Collector under Section 23 or 23A of the act, 2013 and not by an execution of sale deed. The petitioner and respondent No.1 have entered into an agreement by executing the sale deed. It is further submitted that a classification of the two groups of people has been made *viz.* the class whose land is acquired by direct purchase through direct negotiations and the other class whose land is acquired under the Act, 2013 through Collector. In case of acquisition under the Act, 2013, the TDS and tax is waived, but not in case of direct purchase. Such classification is legitimate and permissible. The reliance is placed on the judgments of the Apex Court in the case of ***Budhan Choudhari and Ors. Versus State of Bihar***[3] and ***Kone Elevator India Pvt. Ltd. Versus State of Tamil Nadu & Ors.***[4]

9. The learned Counsel for respondent No.1 further submits that for claiming refund of the TDS deducted, the petitioner has to file a return. It is not for the deductor to file return under the provisions of the Income Tax Act. It is upon the return being filed, the petitioner can claim refund of the tax deducted at source. It is submitted that if a tax payer has to make a claim of refund, then the claim should be made in Form No.30. However, with effect from 1st September 2019, the Finance Act, 2019 has been amended and the refund can be claimed only by filing of return of

3 AIR 1955 SC 191.
4 (2014) 7 SCC 1.

income within the time prescribed under Section 139.

10. We have considered the submissions.

11. It appears that the public notice was issued for acquisition of land through direct purchase and private negotiations by the office of the Sub Divisional Officer, Bhiwandi Division, Bhiwandi for implementing the project viz. Mumbai-Ahmedabad Hi-Speed Rail Project. As per the said public notice, while purchasing the land directly for the project, the compensation will be fixed by giving 25% enhanced amount of the total compensation being calculated for the land concerned as per the provisions of Sections 26 to 33 and Schedule-I of the Act, 2013. Undisputedly, the land was acquired for a public project. Policy decision has been taken by the State Government under its Government Resolution dated 12th May 2015 for acquiring the property by private negotiations and purchases for implementation of public project. Methodology is also provided. The computation of compensation has to be under the provisions of the Act, 2013. The same is introduced to expedite the acquisition for the implementation of the project. If the parties would not agree with the negotiations and direct purchase, then the compulsory acquisition under the provisions of the Act, 2013 has to be resorted to. The Act, 2013 also recognizes the acquisition through an agreement. The reference can be had to the judgment of the Apex Court in the matter of ***Balkrishnan Versus Union of India*** (*supra*). In the said case, though an award was passed and the compensation was fixed on Rs.14,36,616/-, the said amount of compensation

was not acceptable to the petitioner therein. At that stage, some negotiations took place between the parties and it was agreed that the Company for whom the property was acquired shall pay a sum of Rs.38,42,489/-. After the same was agreed upon between the parties, the petitioner agreed to execute the sale deed of the property in question in favour of the Company and the sale deed was executed and registered. While disbursing the amount of sale consideration, the Company deducted 10% of amount of TDS. In that view of the matter, the Apex Court observed that merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale. The Apex Court further observed that "it may be mentioned that this is now the procedure which is laid down even under the Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties. Nonetheless, the character of the acquisition remains compulsory." The Kerala High Court also in case of ***Viswanathan M. Versus The Chief Commissioner, Income Tax Department*** [5]observed that the language of Section 96 of the Act, 2013 does not leave any doubt in the mind that if the land either acquired or the result of an agreement, it could not fall within the mischief of IT Act, in other words, exemption is liable to be granted.

12. The Central Board of Direct Taxes under Circular No.36 of 2016 dated 25th October 2016 also has clarified that "the matter has been examined by the board and it is hereafter clarified that compensation received in respect of

5 Writ Petition (C) No. 3227 of 2020 dt. 18th February 2020.

award or agreement which has been exempted from levy of income tax vide Section 96 of the Act, 2013 shall also not be taxable under the provisions of the IT Act.". It also recognizes acquisition by award or agreement. Section 96 of the Act, 2013 unequivocally provides that no income tax or duty shall be levied on any award or agreement made under the Act except under Section 46. Section 46 would not be attracted in the present case. Section 46 would apply to the specified persons. The specified persons includes any person other than (i) Appropriate Government (ii) Government Company, (iii) Association of persons or Trust or Society as registered under the Societies Registration Act, wholly or partially aided by the appropriate Government or controlled by the Appropriate Government. The respondent no.1 is not a specified person within the meaning of Section 46. In view of that, as the exemption under Section 96 would squarely apply, no income tax can be levied in the present matter for the amount of compensation, inter alia respondent No.1 could not have deducted amount of TDS from the amount of compensation paid to the petitioner.

13. This takes us to the next question as to the manner in which the TDS as deducted by respondent No.1 can be refunded to the petitioner. The petitioner has relied upon Rule 37BA of the Income Tax Rules, 1962 (hereinafter referred to as "**the Rules, 1962**") which provides that credit for tax deducted at source and paid to the Central Government in accordance with provisions of Chapter XVII shall be given to the person to whom payment has been

made or credit has been given. (hereinafter referred to as "deductee") on the basis of information relating to deduction of tax furnished by the deductor to the Income Tax Authority. Rule 37BA (3) (i) of the Rules, 1962 further provides that the credit for tax deducted at source and paid to the Central Government shall be given for the assessment year for which such income is assessable.

14. Further, proviso to Section 200(3) of the IT Act provides that the person may also deliver to the prescribed Authority the correction statement for rectification of any mistake in the statement delivered under the said sub-section in such form and verified in such manner as may be verified by the Authority. Clause (d) of Sub-section (1) of Section 200A of the IT Act *inter alia* provides for determination of the sum payable by, or the amount of refund due to, the deductor. It is the case of the petitioner that her income is exempted from tax and as such she cannot fill Schedule TDS-2 and hence cannot make an application under Section 199 of the IT Act read with Rule 37BA (3)(i) of the Rules, 1962 whereas according to the respondent, the petitioner has to file an income tax return and claim refund. The return would be assessed. Reference is made by the respondent to Section 139 of the IT Act to submit that the refund can be claimed only through filing of return of income within the time prescribed under Section 139.

15. In the present matter, we are not aware whether the petitioner is liable to file return as required under Section 139 of the IT Act. There are various instances under

Section 139 wherein a person is required to file return. All those circumstances and instances enumerated therein are not before the Court. In absence thereof, it is not possible for this Court to arrive at a conclusion as to whether the petitioner is required to file return or not before the Income Tax Department.

16. We have already held that the income received by the petitioner on account of the property acquired by respondent No.1 by private negotiations and sale deed is exempted from tax. The respondent No.1 has already deducted the TDS which it ought not to have deducted. In light of that, we pass the following order :

ORDER

(i) The respondent shall file correction statement as provided under provisio to Sub-Section (3) of Section 200 of the IT Act, 1961 within a period of one month from today to the effect that the TDS deducted by the respondent No.1 was not liable to be deducted.

(ii) The Income Tax Department shall process the statement including the correction statement that may be filed under Section 200A more particularly Clause (d) thereof.

(iii) The parties shall thereafter take steps for refund of the amount in accordance with the provisions of Income Tax Act and Rules.

(iv) Rule is made absolute in above terms. No costs.

(M. G. SEWLIKAR, J.) **(S.V. GANGAPURWALA, J.)**