IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

S.P. Nos. 206 & 207/Bang/2014 AND ITA No.719 & 720/Bang/2014
Assessment years : 2010-11 & 2011-12

Chief Accounts Officer, Bruhat Bangalore Mahanagar Palike, N R Square, Bangalore – 560 002. **PAN: BLRCO 0295B**	Vs.	The Income Tax Officer, Ward 16(1), Bangalore.
APPLICANT/APPELLANT		RESPONDENT

Applicant/Appellant by	:	Shri Rampriyadas, C.A.
Respondent by	:	Shri C.H. Sundar Rao, CIT(DR)

Date of hearing	:	31.10.2014
Date of Pronouncement	:	14.11.2014

O R D E R

Per N.V. Vasudevan, Judicial Member

These are appeals by Chief Accounts Officer, Bruhat Bangalore Mahanagara Palike [hereinafter referred to as '**BBMP**" or "**assessee**") against a common order dated 5.3.2014 of CIT(Appeals)-V, Bangalore ["CIT(A)"] confirming the orders dated 27.3.2013 passed by the ITO (TDS),

Ward-16(1), Bangalore, ["**AO**"] treating BBMP as an "Assessee in Default" for not deducting at source u/s. 201(1) of the Income Tax Act, 1961 ["the Act"] and also levying interest on BBMP u/s. 201(1A) of the Act on the tax that ought to have been deducted and paid to the credit of the Central Government. The appeals relate to assessment years 2010-11 & 2011-12.

2. The municipal governance of Bangalore vested with the Corporation of the City of Bangalore in 1949, under 'The City of Bangalore Municipal Corporation Act, 1949 (Mysore Act LXIX of 1949)' which stood repealed by Sec.507 of the Karnataka Municipal Corporations Act,1976 (KMC Act) and continues to be governed by KMC. The Corporation was renamed as Bangalore Mahanagara Palike (**BMP**). New areas in the vicinity of the city of Bangalore also came under the control of BMP and BMP came to be renamed as Bruhat Bangalore Mahanagara Palike.

3. BBMP in discharge of its functions under the KMC has to acquire land for expansion of existing roads or for construction of underpass etc. There are two modes in which it can achieve its purpose. (i) It can compulsorily acquire lands subject to existence of Public Purpose, payment of due compensation and complying with the other procedure requirements under the Land Acquisition Act, 1894; and (ii) by virtue of the powers conferred under the provisions of Sec.14-B of the Karnataka Town and Country Planning Act, 1961, ["**KTCP**"] as local authority, it can by public notice inform the public purpose for which lands are required, mentioning

the location of the land which are required for public purpose and call upon the owners of those lands to avail the benefit of getting **DRC**'s (Development Right's Certificate) in lieu of land that are surrendered of their land. The owner of any site or land which falling within the area so mentioned can surrender the required area to BBMP free of cost and hand over possession free of encumbrances. BBMP will permit development rights in the form of additional floor area which shall be equal to one and half times of the area of land surrendered. The development right so permitted may be utilised either at the remaining portion of the area after the surrender or anywhere in the local planning area, either by owner himself or by transfer to any other person, as may be prescribed. The area remaining after surrender shall have the same floor area which was available before surrender for the original site or land as per regulations. Sec.14-B of KTCP reads thus:

> "14-B. Benefit of development rights.- Where any area within a local planning area is required by a Planning Authority or local authority for public purpose and the owner of any site or land which comprises such area surrenders it free of cost and hands over possession of the same to the Planning Authority or the local authority free of encumbrances, the planning authority or the local authority, as the case may be, may notwithstanding anything contained in this Act or the regulations but subject to such restrictions or conditions as may be specified by notification by the State Government, permit development rights in the form of additional floor area which shall be equal to one and half times of the area of land surrendered. The development right so permitted may be utilised either at the remaining portion of the area after the surrender or anywhere in the local planning area, either by himself or by transfer to any other person, as may be prescribed.

The area remaining after surrender shall have the same floor area which was available before surrender for the original site or land as per regulations.

Explanation.- For the purpose of this section,-

(a) Public purpose means.-

(i) widening of an existing road or formation of a new road;

(ii) providing for parks, playgrounds and open spaces or any other civic amenities;

(iii) maintaining or improving heritage building or precincts notified by the State Government.

(b) "development right" means the right to carryout development or to develop land or building or both.

Illustration No.1

In a plot area of 500 square meters at road "A", where floor area ratio is 1.5 –

i Plot area : 500 square meters
ii Permissible floor area ratio : 1.5
iii Buildable floor area : 500 x1.5 =750 square meters
iv Area surrendered :100 square meters
v Additional floor area in the form of Development Rights : 150 square meters
vi Plot area after surrender :500-100=400square meters
vii Buildable floor area in plot area of 400 square meters (after surrender):-

(a) If additional floor area is not utilised in the same plot : 750 Sq.Mtrs.
(b) If additional floor area is utilised in the same plot : 750+150 = 900 square meters

Illustration No.2

In a plot area of 500 square meters at road "B", where floor area ratio is 0.75:-

i Plot area : 500 square meters
ii Permissible floor area ratio : 0.75
iii Buildable floor area : 500 x 0.75 =375 square meters
iv Area surrendered :100 square meters
v Additional floor area in the form of Development Rights : 150 square meters
vi Plot area after surrender : 500-100 = 400square meters
vii Buildable floor area in plot area of 400 square meters (after surrender):-

(a) If additional floor area is not utilised in the same plot
(b) If additional floor area is utilised in the same plot : 375 square meters : 375+150 = 525 square meters

Illustration No.3

In a plot area of 500 square meters at road "C", where floor area ratio is 0.75 and Development Right of 150 square meters originated at road "A" is transferred.-

i Plot area : 500 square meters
ii Permissible floor area ratio : 0.75
iii Buildable floor area : 500 x0.75 =375 square meters
iv Additional floor area transferred from road "A" : 150 square meters
v Total Buildable floor area : 375+150 = 525 square meters."

4. During the previous year relevant to AYs 10-11 & 11-12, the owners of the extent of land situate in the various areas as set out in the **Annexures I & II to this order** surrendered their holdings free of cost.

5. As contemplated by Sec.14-B of the KTCP, BBMP gave the owners who surrendered their lands to BBMP, DRC permitting development rights in the form of additional floor area which was equal to one and half times of the area of land surrendered.

6. The Assessing Officer was of the view that BBMP was under an obligation to deduct tax at source on the value of the DRCs in accordance with the provisions of Sec.194-LA of the Act, which reads thus:

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

7. According to the AO DRCs were given in lieu of money for the land surrendered and the money value of the DRC's have to be determined by adopting the guidance value for the land acquired fixed by the State Government for the purpose of Stamp Duty and Registration. In coming to the above conclusion the AO, as has been explained by the CIT(A) in the impugned order, drawn inspiration from the provisions of Sec.50C of the Act, (to the extent relevant for the present appeal) which reads thus:

> "Special provision for full value of consideration in certain cases.
>
> 50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.
>
> *(2)…..*
>
> *Explanation-1:……*
>
> *Explanation 2.*—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.
>
> (3) ……."

8. The AO has however not made any reference to the above provisions in his order. It is on the basis of the valuation for the purpose of

stamp duty in respect of transfer of the land as fixed by the State Government for registration of documents that the AO determined the amount payable by BBMP to the persons who surrender land, which is set out in Annexure-1 and 2 annexed to this order.

9. Before the AO, the stand of BBMP was that DRC is a right to construct extra floor area over and above the floor area ratio (FAR) permissible under the provisions of the Karnataka Town & Country Planning Act, 1961 subject to certain limitations. It means it is an entitlement of right to construct extra floor area. The recipient of the DRC can use it to construct extra floor area on his own property or can transfer the said right to third party subject to conditions laid down in the notification governing grant of DRCs. BBMP thus pointed out that the recipient of DRC does not derive any income by issue of DRC. DRCs are not issued in lieu of money or money consideration quantified on the basis of any valuation.

10. BBMP pointed out that under Chapter XVII of the Act which deals with Collection and Recovery of Tax lays down in Part A of the said chapter in Sec.190(1) lays down that notwithstanding regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of Section 192, as the case may be, in accordance with the provisions of this Chapter. Sec.190(2) of the Act further says that nothing in section 190 shall

prejudice the charge of tax on such income under the provisions of sub-section (1) of Section 4. BBMP pointed out that for application of Sec.194LA of the Act the following conditions are required to be fulfilled viz., (i) There should be a sum payable; (ii) such sum shall be a consideration for compulsory acquisition of immovable property; (iii) Tax shall be deducted at the time of payment of such sum; (iv) Payment may be by cash or by issue of a cheque or draft or by any other mode. It was submitted by BBMP that a combined reading of Sec.190 and 194LA of the Act it is necessary that there should accrue income chargeable to tax in the hands of the recipient. By issue of DRC income does not accrue or arise to the recipient of DRC. In this regard the Assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of *GE India Technology Centre Private Limited Ltd. v. CIT (327 ITR 456)* held that the payment made when it did not comprise any element of income, the payer could not be held liable for non-deduction of tax at source. It was pointed out that valuing DRCs by applying the guideline value applicable for registration of documents for the purpose of stamp duty, adopted by the Registrar for registration of documents, is not correct. It was pointed out that DRCs are not issued on the basis of such guideline values and they have no relevance at all.

11. It was further contended that the person making payment should make payment of a "sum of money" which clearly indicates that the

provisions of Sec.194LA of the Act are applicable only when payment is made in terms of money. It was further pointed out that the expression in Sec.194LA, "at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode" means that payment can be in the mode of giving cash, or by issuing cheque or draft or any other mode like telegraphic transfer or mail transfer, via money order or postal order, bill of exchange, promissory note, electronic transfer like RTGS, NEFT etc. It was further argued that issue of DRCs cannot be brought within the meaning of the expression "by any other mode" used in Sec.194LA of the Act. BBMP relied on the rule of "*Ejusdem Generis*" in interpretation of statutes, which lays down that where general words follow enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. It was submitted that the general word is "payment of such sum" and the mode of payment qualified is cash, issue of cheque or draft or by any other mode. The expression any other mode has therefore to be confined only to payment of "any sum" in a mode other than cash, cheque or draft and not to a case where DRCs are issued.

12. The AO however did not agree with the aforesaid submissions made by BBMP. He held that the mode of acquiring the land by BBMP under Sec.14-B of the KMC would be a transfer of a capital asset within the meaning of Sec.2(47) of the Act as there was relinquishment or extinguishment of right to a capital asset. He held that by virtue of such transfer there arising capital gain u/s.45 of the Act which is chargeable to tax and has to be determined in the manner laid down in Sec.48 of the Act. He also held that the entire process by which BBMP gets land for road widening has an element of compulsory acquisition. The transfer of land to BBMP though is stated to be free of cost but in reality the owner gets DRCs. The question of determining consideration for transfer can be resolved by valuing the DRCs and for this purpose the best way to determine the value is to rely on the provisions of Sec.50-C of the Act and value the land surrendered as per the guideline values fixed by sub-registration for stamp duty valuation and registration. The AO also held that acquiring land u/s.14-B of the KMC would be akin to compulsory acquisition under any law in force. The AO also held that the expression "any sum" means anything in the nature of compensation and issue of DRCs is in the nature of "any sum" and therefore the provisions of Sec.194LA of the Act are applicable.

13. For the above reasons, the AO held that BBMP was an Assessee in default and determined the tax payable and interest on tax payable u/s.201(1) & 201(1A) of the Act respectively in the manner indicated in the

chart given as Annexure-1 and 2 respectively to this order for AY 10-11 & 11-12 respectively.

14. On appeal by BBMP, the CIT(A) confirmed the orders of the AO. Aggrieved by the orders of the CIT(A), BBMP has preferred these appeals before the Tribunal.

15. The learned counsel for BBMP first submitted that provisions of Sec.194LA of the Act will be applicable only when any sum of money is paid as compensation on account of compulsory acquisition under any law for the time being in force. He drew our attention to the order of the AO wherein the AO has given a finding that there was a transfer within the meaning of Sec.2(47) of the Act in the form of relinquishment or extinguishment of right of land owners in favour of BBMP. According to the AO there was an element of compulsion in the manner BBMP acquired property for the purpose of road widening, laying underpass or other public purpose. He filed before us a sample copy of the public notice that BBMP issues when it notifies to owners of property requirement of land for public purpose. For example a notice dated 26.8.2009 was filed before us wherein BBMP had informed that it requires lands for expansion of Kannur Mailanahalli Road, Baagalooru Village from the point of Kannur Junction upto Mailanahalli Village. The estimated expansion of the road is stated to be 45 Mtrs. And the approximate distance of road that is to be expanded is given as 12.10 Kms. The notice informs owners having lands opposite to

the above mentioned road that they can apply for TDR (Transferable Developmental Rights) to the BBMP according to the terms and conditions as per the notification No. UDD/BEM/RUPR A/2004 dated 18.1.2005 (hereinafter referred to as "notification laying down conditions for grant of TDR"). A copy of the notification laying down conditions for grant of TDR was also filed before us the principle conditions of which were (i) The land shall be surrendered through a relinquishment deed; (ii) DRC will be issued and be valid for 5 years and is transferable. (iii) besides several conditions for utilisation of additional FAR granted under DRC are spelt out therein. His contention was that the entire process by which DRCs are issued has no element of "Compulsory Acquisition" which is the sine quo non for applying the provisions of Sec.194LA of the Act. His submission was that the term "Compulsory Acquisition" is neither defined in the Act nor in any other law for the time being in force and therefore one has to look at the dictionary meaning of the term "Compulsory Acquisition". He drew our attention to the dictionary meaning as given in the Advanced Law Lexicon by P. Ramanatha Aiyer edited by Justice Y.V. Chandrachud, 3rd edition 2005 at pages 936, which reads thus:

> "Compulsory acquisition: Where land or an interest in land is purchased or taken under statutory powers without the agreement of the owner, it is said to have been compulsory acquired but where there is statutory power to take mere possession of the land without the acquisition of any estate or interest in it apart from the possession, it is said to have been requisitioned. (8. Halsbury's laws (4th Edn.) para-1)."

16. Though the above meaning is given in contradistinction to what is requisitioning, yet the meaning of the term "compulsory acquisition" is that land should be taken under statutory powers without the agreement of the owner. He drew our attention to the fact that in respect of some of the schemes for road widening where the owners did not respond to offer of CDRs, BBMP has resorted to compulsory acquisition proceedings in accordance with the provisions of the Land Acquisition Act, 1894. It was his submission that in the case of compulsory acquisition there are procedure for objecting to the acquisition on the ground that the proposed acquisition is not for public purpose, requirement of notice, determination of compensation, payment of compensation and thereafter taking possession and ownership. Such elements are absent when land owners surrender their land to BBMP under the scheme of issue of CDRs. It was his submission that there is no process of quantification or determination of value of land acquired when BBMP takes over land under the CDR scheme. It was pointed out by him that whenever BBMP does compulsory acquisition of land and pays compensation, it duly deducts tax at source as required u/s.194LA of the Act. It was his submission that the provisions for deducting tax at source and paying it over to the Government on behalf of the recipient of the payment is in the nature of vicarious liability. The said liability can be easily and without any effort discharged when payment of compensation in a sum of money i.e., in the form of monetary

compensation. At least in cases where the quantification of the sum of money takes place in terms of money but the payment or discharge of the liability is made by adjustment which is otherwise than by payment of monetary compensation, it can be said that there would still be a liability. But where neither there is quantification of the sum payable in terms of money nor actual payment in monetary terms, it would be unfair to burden a person making payment with the obligation of deducting tax at source and exposing him the consequences of such default. In this regard it was also submitted by him that the liability to pay tax is that of a third person and not that of BBMP and the spirit behind the provisions of Sec.190 of the Act has been totally lost sight of by the Revenue in the present case.

17. It was submitted by him that on the facts of the present case the provisions of Sec.194LA of the Act were not applicable because there was no compensation paid towards compulsory acquisition under any law in force and therefore the order u/s.201(1) & 201(1A) of the Act deserves to be quashed. In this regard reliance was placed by him on the decision of the Hon'ble Supreme Court in the case of *CIT Vs. Vatika Township Ltd. 367 ITR 466(SC)* wherein the Hon'ble Supreme Court in the context of levy of surcharge on income tax in case of block assessments observed as follows as to what should be the approach in cases where the liability to tax is not stipulated or cannot be applied with precision:-

At page-491 to 492

"Rate at which tax, or for that matter surcharge is to be levied is an essential component of the tax regime in Govindasaran Gangasaran v. Commissioner of Income Tax 155 ITR 144(SC), this Court, while explaining the conceptual meaning of a tax, delineated four components therein, as is clear from the following passage from the said judgment :

> "The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity."

It is clear that the rate at which the tax is to be imposed is an essential component of tax and where the rate is not stipulated **or it cannot be applied with precision**, it would be difficult to tax a person. It was pointed out that this very conceptualisation of tax was rephrased in *C.I.T, Bangalore v. B.C. Srinivasa Shetty* in the following manner:-

> "The character of computation of provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section."

In the absence of certainty about the rate because of uncertainty about the date with reference to which the rate is to be applied, it cannot be said that surcharge as per the existing provision was leviable on block assessment qua undisclosed income. Therefore, it cannot be said that the proviso added to Section 113 defining the said date was only clarificatory in nature. From the aforesaid table showing the different rates of surcharge in different years, it would be clear that choice of date has to be formed as in some of the years, there would not be any surcharge at all."

At page-494-495:

"At the same time, it is also mandated that there cannot be imposition of any tax without the authority of law. Such a law has to be unambiguous and should prescribe the liability to pay taxes in clear terms. If the concerned provision of the taxing statute is ambiguous and vague and is susceptible to two interpretations, the interpretation which favours the subjects, as against there the revenue, has to be preferred. This is a well established principle of statutory interpretation, to help finding out as to whether particular category of assessee are to pay a particular tax or not. No doubt, with the application of this principle, Courts make endeavour to find out the intention of the legislature. At the same time, this very principle is based on "fairness" doctrine as it lays down that if it is not very clear from the provisions of the Act as to whether the particular tax is to be levied to a particular class of persons or not, the subject should not be fastened with any liability to pay tax. This principle also acts as a balancing factor between the two jurisprudential theories of justice – Libertarian theory on the one hand and Kantian theory along with Egalitarian theory propounded by John Rawls on the other hand."

Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. U.S.14, the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:-

> "Tax Statutes . . . should be strictly construed, and, if any ambiguity be found to exist, it must be resolved in favor of the citizen. Eidman v. Martinez, 184 U.S. 578,583; United States v. Wigglesworth, 2 Story, 369, 374; Mutual Benefit Life Ins. Co. v. Herold, 198 F. 199, 201, aff'd 201 F. 918;Parkview Bldg. Assn. v. Herold, 203 F. 876,880; Mutual Trust Co. v. Miller, 177 N.Y. 51,57."

Again, in *United States v. Merriam*, the Supreme Court clearly stated at pp. 187-88:

> "On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed rather than with legal forms or expressions. But in statutes levying taxes the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favor of the taxpayer. Gould v. Gould, 245 U.S. 151, 153."

As Lord Cairns said many years ago in *Partington v. Attorney-General*: -

> "As I understand the principle of all fiscal legislation it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial15 263 U.S. 179, 44 S.Ct. 69 (1923) 16 (1869) LR 4 HL 100 mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be."

18. The next submission of the learned counsel for BBMP was, without prejudice to his submission that there was no transfer, even assuming that there was a transfer of capital asset consequent to surrender of land owners to BBMP for public purpose within the meaning of Sec.2(47) of the Act there is no obligation to deduct tax at source when there is a transfer

which is not by way of compulsory acquisition. It was pointed out by him that if there is a transfer which is not by way of compulsory acquisition then provisions of Sec.194LA of the Act are not applicable. There is no other provision which requires a transferee to deduct tax at source when making payment to a transferor. He pointed out that such an obligation is now imposed by the provisions of Sec.194IA of the Act which came into force only with effect from 1.7.2014 if the consideration for transfer exceeds Rs.50 lacs. It was his submission that even under the new provisions, which are not applicable for the AY10-11 & 11-12, it would be doubtful whether there would be obligation to deduct tax at source in the facts and circumstances of the present case.

19. The next submission of the learned counsel for BBMP was that provisions of Sec.50C of the Act would be applicable only for the purpose of computing capital gains on transfer of capital asset u/s.48 of the Act. It was his submission that Sec.48 of the Act are not applicable to the facts and circumstances of the present case. In this regard reliance was placed by him on the decision of the Mumbai Bench of ITAT in the case of *ITO vs. Shri Prem Ratan Gupta* (ITAT Mumbai) wherein it was laid down that provisions of Sec.50-C of the Act are not applicable when TDR are transferred. Sec.43A of the Act was introduced by the Finance Act, 2014 whereby provisions of Sec.50-C of the Act were applicable while computing

income from business where property is stock-in-trade of business of an Assessee.

20. The other submissions made before the AO that Sec.194LA of the Act is applicable only when there is income chargeable to tax and when payment of compensation is in a sum of money i.e., monetary consideration and not otherwise. According to him the expression "any sum" and these expressions make it clear that the provisions of Sec.194LA of the Act applies only when there are payments of quantified in terms of money. Reliance was placed by him in this regard on the decision of the Hon'ble Supreme Court in the case of *H.H.Sri Rama Varma Vs. CIT 187 ITR 308 (SC)* wherein the expression "sum" was held to refer to payment of money and not to donations in kind.

21. Our attention was drawn to the provisions of Sec.194B of the Act which imposes obligation to deduct tax, when the payment is made in kind or partly in kind and partly in monetary terms. CBDT in *Circular No. F.No.275/42/75-ITJ dated 9.6.1975* wherein the CBDT opined that when payment is in kind there is no obligation to deduct tax at source. Finance Act, w.e.f. 1-6-1997 a proviso was inserted to Sec.194-B of the Act whereby it was laid down that wherever winnings from lottery is paid in kind the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. The aforesaid

obligation is only a moral obligation and not a legal obligation and therefore no liability can be fastened on the person responsible for paying.

22. The learned DR placed strong reliance on the order of the AO/CIT(A). He relied on the decision of the Hon'ble Supreme Court in the case of *M/S. Kanchanganga Sea Foods Ltd. Vs. CIT*, *Civil appeal Nos.3844-3847 of 2003 judgment dated 7.7.2010 ; 325 ITR 540 (SC)* wherein the question was whether income accrued in India to a Non-resident who had hired trawlers to an Indian company and the hire charges had to be quantified at 85% of the value of fish caught or 600000 US $ whichever is less. The Hon'ble Supreme Court held that the Indian company carried out fishing in economic zone of India and the charter fee was paid to non-resident equivalent to 85% of the value of the fish caught. The quantification was also done in India and therefore income accrues to non-resident in India. The learned DR laid emphasis on the point that even when consideration is quantified otherwise than in terms of money, income accrues or arises. On the issue as to whether the provisions of Sec.194LA of the Act are not applicable for the reason that there was no "compulsory acquisition", it was his submission that the plea was not taken before the lower authorities and therefore it would be in the fitness of things to remand the issue for consideration by the lower authorities.

23. In his rejoinder the learned counsel for BBMP submitted that the decision of the Hon'ble Supreme Court in the case of *Kanchanganga*

Sea Foods Ltd. (supra) is entirely on the question of accrual of income in India and had nothing to do with the question as to whether the expression "a sum" would include payment in kind. In this regard it was submitted by him that on facts of the case in the case of *Kanchanganga Sea Foods Ltd. (supra)* there was quantification of sum payable which was in monetary terms and the measure was only of the monetary terms was with reference to value of fish caught and therefore the facts of the said case stands totally on a different footing from the facts of the present case. It was reiterated by him that in the present case there was no quantification of the value of CDRs. It was submitted by him that the question whether there was compulsory acquisition or not can be decided on the facts of the case and there is no need to remand the issue to the lower authorities for fresh consideration as the issue is purely legal.

24. We have given a very careful consideration to the rival submissions. The first issue that arises for our consideration is as to whether provisions of Sec.194LA of the Act are applicable to the facts and circumstances for the present case for the reason that (a) there was no compulsory acquisition; (b) there was no payment of any monetary consideration.

25. On the above issue, we are of the view that submissions made by the learned counsel for the Assessee are acceptable. As rightly submitted by him the application of Sec.194LA of the Act to the facts of the present case is purely a legal issue which can be decided on the basis of facts on

record. As rightly contended by him the process of surrender of land for public purpose by owners of land and issue of CDRs has no element of "Compulsory Acquisition" which is necessary to attract application of the provisions of Sec.194LA of the Act. The meaning of the term "compulsory acquisition" is that land should be taken under statutory powers without the agreement of the owner. It is clear from material brought on record that the surrender of land by owners was voluntary and in exercise of option under a notification laying down conditions for grant of TDR in exercise of powers u/s.14-B of KTCP. It is also clear that BBMP wherever owners did not respond to offer of CDRs, BBMP has resorted to compulsory acquisition proceedings in accordance with the provisions of the Land Acquisition Act, 1894. In the case of compulsory acquisition there are procedure for objecting to the acquisition on the ground that the proposed acquisition is not for public purpose, requirement of notice, determination of compensation, payment of compensation and thereafter taking possession and ownership. Such elements are absent when land owners surrender their land to BBMP under the scheme of issue of CDRs. It is also clear that there is no process of quantification or determination of value of land acquired when BBMP takes over land under the CDR scheme. Whenever BBMP does compulsory acquisition of land and pays compensation, it duly deducts tax at source as required u/s.194LA of the Act. We are in complete agreement with the contention of the learned counsel for the Assessee that the provisions for deducting tax at source and paying it over

to the Government on behalf of the recipient of the payment is in the nature of vicarious liability. The said liability can be easily and without any effort can be discharged when payment of compensation in a sum of money i.e., in the form of monetary compensation. At least in cases where the quantification of the sum of money takes place in terms of money but the payment or discharge of the liability is made by adjustment which is otherwise than by payment of monetary compensation, it can be said that there would still be a liability. But where neither there is quantification of the sum payable in terms of money nor actual payment in monetary terms, it would be unfair to burden a person with the obligation of deducting tax at source and exposing him the consequences of such default. We agree with his submission that the liability to pay tax is that of a third person and not that of BBMP and the spirit behind the provisions of Sec.190 of the Act has been totally lost sight of by the Revenue in the present case. We are therefore of the view that on the facts of the present case the provisions of Sec.194LA of the Act were not applicable because there was no compensation paid towards compulsory acquisition under any law in force and therefore the order u/s.201(1) & 201(1A) of the Act deserves to be quashed.

26. We are also of the view that the provisions of Sec.194LA of the Act would apply only when there is monetary payment. In this regard we find that provisions of Sec.194LA of the Act applies only when the person making payment should make payment of a “sum of money” which clearly

indicates that the provisions of Sec.194LA of the Act are applicable only when payment is made in terms of money. The expression “any sum” used in Sec.194LA of the Act is a clear indication that those provisions are applicable only when payment is of consideration in terms of money. The Hon’ble Supreme Court in the case of *Sri H.H. Rama Varma (supra)* had an occasion to examine the meaning of the term “sum” in the context of the provisions of Sec.80G of the Act. The Assessee in that case donated equity shares of Nirlon Synthetic Fibres and Chemicals Ltd. having a face value of Rs. 12,50,000 to each of two trusts. The assessee claimed exemption under s. 80G of the Act in respect of the aforesaid donations made by him to charitable trusts. The claim was rejected on the ground that the expression "sums" occurring in s. 80G did not include any donation made in kind in the shape of shares. The Hon’ble Kerala High Court, agreed with the view as aforesaid taken by the Tribunal. On further appeal, the Hon’ble Supreme Court examined the provisions of Sec.80G of the Act, which reads thus:-

> "80G(1). In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, an amount equal to,—
>
> (a) where the assessee is a company, fifty per cent; and
>
> (b) in the case of any other assessee, fifty-five per cent, of the aggregate of the sums specified in sub-s. (2).
>
> (2) The sums referred to in sub-s. (1) shall be the following, namely :

(a) any sums paid by the assessee in the previous year as donations to....

(iv) any other fund or any institution to which this section applies".

27. The Hon'ble Supreme Court had to interpret whether the expression "any sums paid by the Assessee in the previous year would also include donations in kind. The Hon'ble Court held as follows:-

> "The language used in s. 80G(2)(a) is clear and unambiguous. On a plain reading of the section, it is apparent that an assessee is entitled to claim deduction from his income on the amount of money paid by him as donation to the authorities and for the causes specified therein. The use of the expression "any sums paid" contemplates payment of an amount of money. One of the dictionary meanings of the expression "sum" means any indefinite amount of money. The context in which the expression "sums paid by the assessee" has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donation. The Act provides for assessment of tax on the income derived by an assessee during the assessment year; the income relates to the amount of money earned or received by an assessee. Therefore, for purposes of claiming deduction from income-tax under s. 80G(2)(a), the donation must be a sum of money paid by the assessee. The plain meaning of the words used in the section does not contemplate donations in kind. Donations may be made by supplying goods of various kinds including building, vehicle or any other tangible property but such donations, though convertible in terms of money, do not fall within the scope of s. 80G(2)(a) entitling an assessee to deduction. Donation of shares of a company does not amount to payment of any sum or amount though the shares, on their sale, may be converted into money. But the donation so made does not fall within the ambit of the aforesaid section. Since the expression and language used in s. 80G(2)(a) is plain and clear, it is not open to the Courts to enlarge the scope by its interpretative process

> founded on the basis of the object and purpose underlying the provision for granting relief to an assessee."

28. Sec.194LA of the Act also uses the expression "any sum" which clearly indicates that it is only when payment is made in monetary terms that those provisions are attracted.

29. We also agree with his submission that the expression in Sec.194LA, "at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode" means that payment can be in the mode of giving cash, or by issuing cheque or draft or any other mode like telegraphic transfer or mail transfer, via money order or postal order, bill of exchange, promissory note, electronic transfer like RTGS, NEFT etc. DRCs cannot be brought within the meaning of the expression "by any other mode" used in Sec.194LA of the Act. The rule of "Ejusdem Generis" in interpretation of statutes, which lays down that where general words follow enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned is fully applicable to the interpretation of Sec.194LA of the Act. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated. The

general word in Sec.194LA of the Act is "payment of such sum" and the mode of payment qualified is cash, issue of cheque or draft or by any other mode. The expression any other mode has therefore to be confined only to payment of "any sum" in a mode other than cash, cheque or draft and not to a case where DRCs are issued. Even on this ground the order u/s.201(1) & 201(1A) of the Act deserves to be quashed and is hereby quashed.

30. We are also of the view that the decision of the Hon'ble Supreme Court in the case of *Kanchanganga Sea Foods Ltd. (supra)* is entirely on the question of accrual of income in India and had nothing to do with the question as to whether the expression "a sum" would include payment in kind. Therefore on facts of the case in the case of *Kanchanganga Sea Foods Ltd. (supra)* there was quantification of sum payable which was in monetary terms and the measure was only of the monetary terms was with reference to value of fish caught and therefore the facts of the said case stands totally on a different footing from the facts of the present case. The present case there was no quantification of the value of CDRs. Therefore the decision rendered in the case of *Kanchanganga Sea Foods Ltd. (supra),* in our view, will not apply to the facts of the present case.

31. In view of the conclusion as above, we do not deem it necessary to deal with the other arguments advanced by the parties before us as to

whether provisions of Sec.50-C of the Act could not have been applied and other submissions.

32. For the reasons stated above we hold that the provisions of Sec.194LA of the Act are not applicable in the facts and circumstances of the present case and therefore the orders u/s.201(1) & 201(1A) of the Act as upheld by the CIT(A) are held to be bad in law and hereby quashed. The appeals of BBMP are allowed.

33. In the result, the appeals are allowed.

SP Nos.206 & 207/Bang/2014

34. Since the appeals in question have been heard and adjudicated upon hereinabove, these stay petitions have become infructuous and as such, they are dismissed.

Pronounced in the open court on this 14th day of November, 2014.

Sd/-	Sd/-
(JASON P. BOAZ)	(N.V. VASUDEVAN)
Accountant Member	Judicial Member

Bangalore,
Dated, the 14th November, 2014.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.