



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER 2015

PRESENT

THE HON'BLE MR. JUSTICE VINEET SARAN

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

I.T.A.NO.94 OF 2015

AND

I.T.A.NO.466 OF 2015

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
TDS, NO.59, HMT BHAVAN,
4TH FLOOR, BELLARY ROAD,
GANGANAGAR,
BANGALORE-560 032.
2. THE INCOME TAX OFFICER (TDS)
WARD-16(1),
NO.59, HMT BHAVAN,
4TH FLOOR, BELLARY ROAD,
GANGANAGAR,
BANGALORE-560 032. ... APPELLANTS

(BY:SRI. K V ARAVIND, ADVOCATE)

AND:

CHIEF ACCOUNTS OFFICER
BRUHAT BANGALORE MAHANAGAR PALIKE,
N R SQUARE, BANGALORE-560 002.
PAN:BLRC0 0295B ... RESPONDENT

THESE ITAs ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:14/11/2014 PASSED IN S.P.NO.206/BANG/2014 AND ITA NO.719/BANG/2014, FOR THE ASSESSMENT YEAR 2010-2011 PRAYING TO: I). FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN SP NO.206/BANG/2014 AND ITA NO.719/BANG/2014 DATED:14/11/2014 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE INCOME TAX OFFICER (TDS), WARD-16(1),BANGALORE.

THESE I.T.As COMING ON FOR ADMISSION THIS DAY, **VINEET SARAN.J.**, DELIVERED THE FOLLOWING:

JUDGMENT

For discharging of its functions i.e., expansion of existing roads and construction of underpasses, etc. Bruhath Bengaluru Mahanagara Palike ['BBMP' for short] has to acquire lands. To achieve the purpose, it may resort to compulsory acquisition of lands under the provisions of Land Acquisition Act, 1894 or any such other Act relating to compulsory acquisition of land or take land under Section 14B of the Karnataka Town and Country Planning Act, 1961 ['KTCP Act' for short], where the land owner may voluntarily surrender

his land free of cost and handover possession of such lands and in lieu thereof, Certificate of Development Rights [‘CDR’ for short] are issued by the Authority, whereby, the owner would be granted CDR rights in the form of additional floor area, which shall be equal to 1½ times of area of land surrendered.

2. In the present case, the land has been taken under Section 14B of KTCP Act and not by way of any compulsory acquisition. As such, there was no cash transaction or payment made by BBMP to the land owner.

3. Invoking provisions of Section 194LA of the Income Tax Act, [‘I.T.Act’ for short] the Assessing Officer treated respondent – BBMP as ‘assessee’ under default for not having deducted the tax at source (TDS) under Section 194LA and deposited the same with the Income Tax Department. Consequently, after quantifying the

amount of value of land so surrendered by the land owner in favour of BBMP, the Assessing officer directed that TDS at the rate of 10% under Section 194LA amounting to ₹2,41,91,128/- was to be deposited by the assessee.

4. An appeal filed by the respondent-BBMP was dismissed by the Commissioner of Income Tax (Appeals), which was challenged by BBMP before the Tribunal and by a detailed and reasoned order dated 14.11.2014, the appeal of BBMP has been allowed. Aggrieved by the same, Revenue has filed these appeals raising the following substantial question of law:-

“1. Whether, on the facts and circumstances of the case, the Tribunal is right in law in holding that the provisions of section 194LA of the I.T.Act are not applicable in the facts and circumstances of the case without appreciating the legal provisions of said section which mandates that income tax has to be deducted at source at time of payment of compensation, whether by cash or by draft/cheque or by any other mode (in the instant case it is in the form of DRC) attracts deduction of TDS and DRC in the hands of the owner is a valuable property and marketable commodity?”

5. We have heard Sri K.V.Aravind, learned counsel for appellant–Revenue and perused the records.

6. The submission of learned counsel for appellants is that since the land was acquired by BBMP, which could be valued in terms of money under Section 50C of I.T. Act, BBMP ought to have deducted 10% of such value and deposited the same, as required under Section 194LA of I.T. Act.

7. The Tribunal has dealt with the issue at length and has recorded a finding that the provisions of Section 194LA would be applicable only in case of compulsory acquisition, whereas, the lands acquired by BBMP was not by way of compulsory acquisition, but had been surrendered by the land owner under Section 14B of KTCP Act. Section 194LA of the Act, reads as follows:-

“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.”

8. A bare reading of the said Section would make it clear that it would be applicable only in case of payment of any sum of money as consideration on account of compulsory acquisition of any immovable property, for which payment is made in cash, cheque, demand draft or any other mode. In the present case, neither there is compulsory acquisition of the land, nor there is any process adopted for quantification or determination of value of land acquired by BBMP which is voluntarily surrendered by the land owner, for which CDRs were given to the land owner. As such, we are in agreement with the finding recorded by the Tribunal

that provisions of Section 194LA of I.T. Act would not be attracted in the present case.

9. Even otherwise, the Tribunal has rightly observed that the provisions of deducting tax at source and paying it over to the Government on behalf of the recipient of payment, is in the nature of vicarious liability. When there is neither quantification of the sum payable in terms of money nor any actual payment is made in monetary terms, it would not be fair to burden a person with the obligation of deducting tax at source and exposing him to the consequence of such default.

10. We may explain this by way of an example. If a land owner surrenders 10,000 sq.ft. of his land under Section 14B of KTCP Act and thus receives CDRs for 15,000 sq.ft. floor area, clearly, there would be no monetary transaction in such a case. Now, when the

BBMP has not paid any money to the land owner by cash, cheque, demand draft or any other mode, the question would be as to wherefrom BBMP has to deposit any amount as tax deduction at source. It is only when certain payment is made to a party, then the party making the payment, deducts a particular percentage (which u/s.194LA is 10%), which has to be deducted and deposited with the Income Tax Department.

11. If so, for example, ₹1.00 crore is the amount of compensation to be paid to the land owner, then instead of paying the full amount to the land owner, the acquiring body would pay ₹90.00 lakhs to the land owner and deduct ₹10.00 lakhs and deposit the same as TDS amount. But, if CDRs for 15,000 sq.ft. floor area is given to the land owner, then would the BBMP be required to issue 13,500 sq.ft. CDRs to the land owner and deposit 10%, i.e., 1500 sq.ft. CDR with the Income Tax Department or would BBMP in such a situation be

required to deposit a particular sum equivalent to 1500 sq.ft. CDR, even when the entire CDR for 15000 sq.ft. floor area has been given to the land owner.

12. The concept of tax deduction at source (TDS) and depositing the same with the Revenue is where payment is made by cash, cheque, demand draft or any other similar mode. When such payment in terms of money is made, the deduction is to be made by the person responsible to pay, and is to deposit the same with the Income Tax Department, which would be adjusted and credited to the account of the person on whose behalf such amount is paid to the Income Tax Department, and in such a case, such person, who would then be an assessee before the Department, would be entitled to adjustment of the amount so deducted as TDS on behalf of the said assessee. When no payment is made by BBMP to the land owner in

terms of money, such deduction is neither possible nor is conceived under Section 194LA.

13. As such, in view of the aforesaid discussion, we are of the view that the order of the Tribunal is perfectly justified in law and no question of law arises in these appeals for determination by this Court.

The appeals are accordingly ***dismissed***. No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

VGR