(2018) 09 BOM CK 0009

Bombay High Court (Goa Bench)

Case No: Income Tax Appeal (It) No. 308, 309, 310, 311, 312, 314, 374 Of 2016

Commissioner Of Income Tax (Tds)-1		APPELLANT
	Vs	
M/S. Mumbai Metropolitan Regional Development Authority		RESPONDENT

Date of Decision: Sept. 6, 2018

Acts Referred:

- Income Tax Act, 1961 - Section 194C, 194J, 194L, 194LA, 201(1), 201(1A), 260A
- Land Acquisition Act, 1894 -

Hon'ble Judges: S. C. Dharmadhikari, J; B.P.Colabawalla, J

Bench: Division Bench

Advocate: Suresh Kumar,R.S.Padvekar, Tanzil Padvekar

Final Decision: Disposed Off

Judgement

B. P. Colabawalla JÂ

1. By these appeals filed by the Revenue under section 260A of the Income Tax Act, 1961, exception is taken to the common order passed by the

Income Tax Appellate Tribunal â€œBâ€ Bench, Mumbai (for short the â€œITATâ€) for Assessment Years (for short â€œA.Y.â€) 2000-01 to 2009-

10 in relation to the very same assessee.Â Â

2. Mr Suresh Kumar, learned counsel appearing on behalf of the Revenue submitted that, as far as Income Tax Appeal Nos. 308, 310, 312, 314 and

373 of 2016 are concerned, they give rise to three substantial questions of law which reads as under:Â

(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in confirming the order of the Ld. CIT (A)

by holding that provisions of section 194LA are not applicable, without appreciating the fact that cost of construction incurred by the assessee is the

consideration paid for acquiring such rights, interest and titles from such squatters/hutments ?.

(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in rejecting the stand of the revenue as the

squatters/hutments were deemed owners of the property and the land or residental units/commercial establishments were compulsorily

acquired/vacated and the squatters/hutments have been provided a tenements of 225 sq.feet as consideration, the compensation given in the form of

'free of cost construction of 225 sq.ft. As tenement' is squarely covered u/s 194LA of the IT Act, 1961.Â Â

(c) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in holding that the consideration given by

assessee to such squatters/ hutments was not in the nature of 'compulsory acquisition of land/ structure' as the land is not owned by squatters/

hutments, when section 194LA states that TDS is liable to be deducted for compensation given on compulsorily acquisition of 'immovable property â€

which includes land, any building or part of the building', wherein the squatters have rights, interest & title from such hutments on such immovable

property.

3. As far as Income Tax Appeal Nos.309 of 2016 and 311 of 2016 are concerned, Mr Suresh Kumar would submit that over and above the three

substantial questions of law reproduced above, an additional substantial question of law would arise in these two appeals as they relate to A.Y. 2008-

09 and 2009-10. This additional question of law that arises in these two appeals and as projected by Mr. Suresh Kumar as being substantial, reads

thus:Â Â

(d) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in confirming the stand taken by the Ld. CIT

(A) without appreciating the fact that to carry out the maintenance work of AC and Lift requires highly qualified specialized technical competency

which falls within the purview of section 194J and not u/s 194C of the I.T.Act, 1961.

4. Since common questions of facts and law arise in all these appeals, they are being disposed of by this common order and Judgment.Â Before we

advert to the legal submissions, it would be appropriate to set out some necessary facts.Â

5. In the present case, the Assessing Officer passed the impugned order of assessments under section 201(1)/201(1A) of the I.T.Act, 1961.Â The

order of the assessments were passed as the Assessing Officer was of the firm opinion that there has been acquisition of immovable property for

various projects by the assessee, for which the project affected persons were compensated as per the Land Acquisition Act, 1894.Â Since, the

assessee had not deducted Tax at Source (for short â€œTDSâ€) as per the provisions of section 194L/194LA, the Assessing Officer treated the

assessee as an assessee in default and computed the payment of tax under section 201(1) and that for interest under section 201(1A) of the Act.Â Â

6. Additionally, for A.Y. 2008-09 and 2009-10 the Assessing Officer noticed the assessee had made payment towards Annual Maintenance Contracts

(AMCs) for Air Conditioners and Lifts on which TDS was deducted under section 194C of the Act when, according to the Assessing Officer, the

same ought to have been deducted under section 194J.Â Since, the assessee had deducted TDS under section 194C, the Assessing Officer

proceeded by levying the liability under section 201(1) of the Act and also held the assessee liable to pay interest under section 201(1A) of the Act.

7. Being aggrieved by the impugned assessments, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) [for

short â€œCIT(A)â€].Â After considering the facts of the case and hearing the submissions of parties, in relation to section 194L/194LA, the CIT(A)

was convinced that there was no payment of compensation for acquisition of any land or immovable property, and therefore, the said sections had no

application to the facts of the present case. Accordingly, he deleted the demand raised by the A.O. under section 201(1) and 201(1A) of the I.T.Act,

1961.Â

8. Similarly, the CIT(A) also observed that the Annual Maintenance Contracts were contracts for periodical inspection and routine maintenance work

along with supply of several parts.Â He was, therefore, of the belief that such services do not constitute technical services, and therefore, section

194J had no application to the facts and circumstances of the present case.Â To support his view, the CIT(A) also relied upon a decision of the

Tribunal of the Gujarat Bench in the case of Gujarat State Electricity Corporation Vs. ITO,

[3 SOT 468 (Ahd)] and also on another decision of the same Tribunal in the case of Nuclear Power Corporation Ltd. in ITA Nos. 3059 to

3061/Ahd./2009. In these circumstances, the CIT(A) held thatÂ the assessee had correctly deducted the TDS under section 194C of the I.T.Act,

1961 and was not required to deduct TDS as per the provisions of section 194J thereof. He, therefore, deleted the demand of tax/interest under

section 201(1) and section 201(1A) of the I.T.Act, 1961.

9. Being aggrieved by the decision of the CIT(A) on the aforesaid mentioned issues, the revenue filed appeals before the ITAT. The ITAT, after

hearing the parties, upheld the order of the CIT(A) and dismissed the appeals filed by the revenue.Â This is how all these appeals have come up

before us.

10. On the applicability of section 194L/194LA of the I.T.Act, 1961, Mr Suresh Kumar submitted before us that the ITAT was not justified in

confirming the order of the CIT(A) by holding that the provisions of section 194L/194LA of I.T.Act, 1961 were not applicable, without appreciating

the fact that the cost of construction incurred by the assessee was the consideration paid for acquiring the rights, interest and titles from the

squatters/hutment dwellers.Â He submitted that, in the facts of the present case it was not disputed that there were squatters/hutment dwellers on the

property of the assessee who were rehabilitated and were provided tenements of 225 sq.ft. as consideration/ compensation.Â These 225 sq. ft.

tenements were given to each squatter/hutment dweller free of cost by the assessee.Â He submitted that in these facts, section 194L/194LA of the

I.T. Act, 1961 was squarely attracted, and therefore, a substantial question of law arose for determination of this Court.Â Â

11. Mr Suresh Kumar further submitted that the ITAT went completely wrong in rejecting the stand of the revenue that the squatters/ hutment

dwellers on the property of the assessee were deemed owners thereof as their residential/commercial units were compulsorily acquired by the

assessee by providing to each of them 225 sq. ft. tenements free of cost.Â It was submitted by Mr Suresh Kumar that all this would clearly go to

show that there was a compulsory acquisition of the land owned by the squatters/ hutment dwellers and hence section 194L/194LA of the I.T. Act,

1961 were squarely attracted in the facts and circumstances of the present case.Â

12. As far as A.Y. 2008-09 and A.Y. 2009-10 are concerned (subject matter of Income Tax Appeal No.309 of 2016 and Income Tax Appeal No.311

of 2016), Mr Suresh Kumar submitted that in these assessment years, the assessee had also engaged a third party for maintenance work of air

conditioners and lifts which required highly qualified and specialized technical experts, and therefore, fell under â€œtechnical servicesâ€.Â This being

the case, Mr Suresh Kumar submitted that before making payment to these persons, the assessee was required to deduct TDS under section 194J of

the I.T.Act, 1961 and not under section 194C of the Act. For all these reasons, Mr Suresh Kumar submitted that all these appeals gave rise to

substantial questions of law (as reproduced above) which ought to be considered by us under section 260A of the Act.

13. On the other hand Mr R. S. Padvekar, learned advocate appearing on behalf of the assessee, submitted that there is absolutely nothing wrong in

the order passed by the CIT(A) or by the ITAT that required any interference by us in our appellate jurisdiction.Â He submitted that none of the

questions as proposed by the revenue were substantial questions of law. The appeals, therefore, ought to be dismissed with costs, was the submission

of the learned advocate appearing on behalf of the assessee.Â Â

14. We have heard the learned counsel for parties at length and have also perused the papers and proceedings in all the appeals.Â

We will deal with both the issues separately.Â Â

15. Section194LA of the I.T.Act, 1961 inter alia deals with payment of compensation on acquisition of certain immovable property.Â Section 194LA

of the I.T.Act, 1961 was brought into force with effect from 1st October, 2004.Â Section 194L of the I.T.Act, 1961 deals with payment of

compensation on acquisition of a capital asset and was omitted with effect from 1st June, 2016. Basically, what both these provisions provide is that

any person responsible for paying to a resident any sum in the nature of compensation or enhanced compensation or consideration or enhanced

consideration on account of compulsory acquisition, under any law for the time being in force of any capital asset, 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, is liable to deduct an amount equal to 10% of such sum as TDS on

the income comprised therein. The provisos to said sections are not really relevant or germane for our purpose.Â What can be seen from the

aforesaid provisions is that TDS is to be deducted when compensation is paid on account of compulsory acquisition under any law for the time being in

force.Â In the facts of the present case, as correctly recorded by the ITAT, for the purpose of implementing the scheme of the Government relating

to road widening near the railway track, the assessee evacuated the illegal/unauthorized persons who were squatters/hutment dwellers. The fact of

the matter was that the possession of these persons was unauthorized and illegal and they were not the owners of the land on which they had squatted

/ built their illegal hutments.Â In fact, they were trespassers. This being the case, there was no question of the land being acquired by the assessee.Â

In fact the ITAT, and in our view correctly, came to the conclusion that the land always belonged to the State; it was encroached upon, which

encroachment was removed by the assessee; and the encroaching squatters / hutment dwellers were rehabilitated.Â This being the case, we find that

section 194L or section 194LA of the I.T. Act, 1961 had absolutely no application to the facts and circumstances of the present case.Â We find that

the revenue has totally misunderstood the law when it assumes that the squatters / hutment dwellers are deemed owners of the land on which they

squat or encroach upon.Â The squatters / hutment dwellers have absolutely no title in the land on which they squat or build their illegal and

unauthorized hutments.Â This being the case, there is no question of there being any compulsory acquisition from them under any law either under

the Land Acquisition Act, 1894 or any other enactments which permit compulsory acquisition of land.Â This being the case, we find that section 194L

or section 194LA of the I.T. Act, 1961 has absolutely no application to the facts and circumstances of the present case. We, therefore, find that the

first three questions of law [reproduced as questions (a) to (c)], do not give rise to any substantial question of law which would require us to admit

these appeals.Â Â

16. Even as far as the additional question of law [qustion (d)], and which was projected as substantial by Mr Suresh Kumar, we find no merit in the

same.Â In this regard the ITAT correctly held that the assessee had made payments only in respect of maintenance contracts which relate to minor

repairs, replacement of some spare parts, greasing ofÂ machinery etc.Â These services do not require any technical expertise, and therefore, could

not be categorized as â€œtechnical servicesâ€ as contemplated under section 194J of the I.T.Act, 1961.Â We must mention here that section 194J of

the I.T.Act, 1961, deals with fees for professional or technical services.Â In contrast, section 194C of the I.T.Act, 1961 deals with payments to

contractors.Â In the facts and circumstances of the present case, the assessee had correctly deducted TDS under the provisions of section 194C of

the I.T.Act, 1961 and not as per the provisions of section 194J thereof. This being the case, we find that even the additional question of law [question

(d)] as reproduced above (for the A.Y. 2008-09 and 2009-10) does not give rise to any substantial question of law which would require us to admit the

present appeals.Â

17. Considering the discussion above, we find that no substantial question of law arises for our consideration in all these appeals. They are all,

accordingly, dismissed.Â However, in the facts and circumstances of the case, there shall be no order as to costs.Â Â Â Â Â