

KAUK020000052018



**IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE ,  
KARWAR.**

**PRESENT : Shri. Mahantesh S. Daragad  
B.Sc.,LL.B.(Spl.)  
Addl. Senior Civil Judge & JMFC.,  
Karwar.**

**EXECUTION CASE NO.2/2018**

**Dated this 28<sup>th</sup> day of July, 2022**

**Decree Holder** : Smt.Narayani W/o.Babu Gouda  
Age : 60 years,  
Occ: Agriculturist  
Now at Rehabilitation Centre  
(Seabird) Kodar  
Karwar taluka.

*(By Sri.K.S.K. - Advocate)*

*// Vs. //*

- Judgment Debtors:**
1. The Special Land Acquisition Officer  
Naval base, Seabird Project,  
Karwar, M.G.Road,  
Karwar.
  2. The Defence Estate Officer  
Karnataka & Goa Circle  
T-56 ASSYE Lines

Kamaraj Road,  
Bangalore 42.

*(JDr.No.1 by Learned D.G.P.)*

*(JDr.No.2 by Sri.S.G.C. - Advocate)*

**ORDER**

The present execution petition arising out of award in LAC.No.251/1994 in acquisition of agricultural land situated at Kodar village in Karwar taluka under a Project SEABIRD Naval base Karwar.

2. The Government has acquired the land of Decree Holder, special land acquisition officer passed award under No.LAQ.SR.5/3.9.94, then the award was challenged u/Sec.18(1) of L.A.Act this referal Court enhanced the compensation of land bearing Re Survey No.181/2 measuring 1-06-00 and 190/2 measuring 1-19-00 of Kodar village in Karwar taluka.

3. The Decree Holder has filed memo of calculation and vehemently argued that admittedly, the Decree Holdger is land owner, compensation has been assessed as per the provisions of [Land Acquisition Act](#), 1894 (hereinafter referred to as the "Act")

and Decree Holder was aggrieved against the TDS to be remitted by the Land Acquisition Collector to the Income Tax Department. The issue with regard to deduction of tax at source on the payment of interest on compensation awarded under [Section 23](#) as well as under [Section 28](#) of the Act is no more res integra. Although tax is liable to be paid on income by way of capital gains which also includes compensation in lieu of compulsory acquisition of land, however, tax liability is based on type of land viz. Rural and Urban, there is exemption from tax liability after 01.04.2004 as per [Section 10\(37\)](#) of the Income Tax Act. In the present case amount deposited is as per Sec.28 of the Land Acquisition Act, land is agricultural deducting TDS is barred under Income Tax Act, sought balance payable amount as on 31.12.2017 is Rs.13,56,774/-.

4. On the other hand, Judgment Debtors SLAO has filed his objections stating that the claim of Decree Holder is not in support of law and is liable to be dismissed, Judgment Debtors admitted the calculation made by Decree Holder, disputing on deduction of amount by Judgment Debtors under the head of TDS

for Rs.12,89,657/-. Further stated that entire amount of Decree Holder is deposited Rs.51,97,013/- out of Rs.64,86,670/- and deducted Rs.12,89,657/- as TDS, the Judgment Debtors have paid entire amount. The Judgment Debtor No.1 filed memo stating that amount deducted in the present case is u/Sec.28 not u/Sec.34 of Land Acquisition Act, there is no much more difference in both, Sec.34 of the Act speak the same but not involved the solatium and additional market value, the question of payment of amount in the present case does not arise and prays to dismissal of the execution petition.

5. Heard and perused the records.

6. The following points that arise for my consideration are as under:

### **POINTS**

1. *Whether the Land Acquisition Officer at Karwar is justified in deducting 10% of the interest awarded u/Sec.28 of the L.A.Act, 1894, towards deduction of tax at source though the lands acquired were agricultural lands?*
2. *What order?.*

7. Upon hearing the arguments and on perusal of the material placed on records, my findings to the above points are as under:

Point No.1 : In the **Negative**.

Point No.2: As per final order, for the following:

### **REASONS**

8. **Point No.1** :- The issue regarding deduction of tax at source on the interest payable in respect of the compensation awarded under the Land Acquisition Act. The Decree Holder was owner of the land, the Judgment Debtor No.1 made award u/Sec.11 of the L.A.Act determining the compensation, not being satisfied with the quantum of compensation, the Decree Holder sought reference u/Sec.18 of the Act, this Court enhanced the compensation.

9. The learned counsel for Judgment Debtors submit that the amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability, then Judgment Debtors have

deposited the enhanced compensation with interest after deducting TDS before reference Court, deduction of TDS is must even though interest awarded u/Sec.28 and land is agricultural, he deducted amount and deposited as per Income Tax Act. It is the deductors responsibility to deduct TDS before making the payment and deposited the same with the Government for the deductee, the deducted TDS can be claimed in the form of tax, refund after he file income tax returns then the interest received on compensation is to be treated as income from other sources and not under the head capital gains, when interest paid either u/Sec.34 or Sec.28 of the Land Acquisition Act, it is only a payment in consideration of loss of enjoyment of the possession by the owner, it is not by way of any charge on compensation determined u/Sec.23(1). Therefore, it is not exigible to income tax.

10. On the other hand the contention of Decree Holder is that Judgment Debtors herein were not empowered or entitled to deduct tax at source and relied Section 194 L.A. of I.T.Act, it reads thus:

**Section 194LA:** Payment of compensation on acquisition of certain immovable property: 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 percent 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 payment to a resident during the financial year does not exceed one hundred thousand rupees.

11. Further I relied the judgment of the Hon'ble High Court reported in **2011 (1) KCCR SN 58 Circuit bench at Dharwad** in case of *Smt.Akkamma w/o.Puradayya v/s. The Registrar General, para No.8 reads thus:*

***Para No.8:*** *It is specifically stated in Section 194 LA of the Income Tax Act that person responsible to pay compensation / enhanced compensation or*

*consideration/enhanced consideration on account of compulsory acquisition under any law of immovable property (other than agricultural and) at the time of payment of such sum deduct an amount equal to 10% of such sum as income tax, thereon, if compensation payable is on account of the acquisition of agricultural land the person responsible for paying the amount is not liable to deduct TDS. The impugned direction at Annexure-A given by the learned District Judge is not lucid and on the other hand vague. Therefore, the same is liable to be quashed.*

12. The learned counsel for Decree Holder relied the judgment of Hon'ble High Court reported in **ILR 2018 KAR 3343** in case of ***M/S. Power Grid Corporation of India Ltd., v/s. The Assistant Commissioner, Mysore and others wherein held***

*The interest that has been awarded by reference court in exercise of the discretion vested in it by virtue of Section 28, is interest awarded under Section 28 and not under Section 34 of the land Acquisition Act, 1894 -*

*Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. - Order passed by the Executing Court holding that petitioner was not entitled to deduct tax at source on the interest payable on the enhanced compensation cannot be found fault with.*

13. In the above judgment the Hon'ble High Court has relied the judgment reported in **2009 (8) SCC 412** in case of Commissioner of Income Tax Hyderabad v/s. Ghanshyam in which Hon'ble Apex Court has held that tax is liable to be deducted on interest component and in which it is clarified that interest as referred to under the Land Acquisition Act would be referable to u/Sec.28 as well as Section 34 and where interest is awarded u/Sec.34 of the L.A.Act then it would not form part of compensation and as such would be exigible to tax and in the event interest is ordered to be paid on the enhanced compensation as indicated u/Sec.28, such interest would form part of compensation and thus, would be outside the purview of exigibility and applied the fact at not it is clear that interest that

has been awarded by this Court as a reference Court in the exercise of discretion in it by virtue of Section 28 is interest awarded u/Sec.28 and not u/Sec.34 of the L.A.Act, 1894, in that view of the matter this Court is of the opinion that deduction of interest is not permissible under law, interest component which has been claimed by the Decree Holder is on the enhanced compensation. An accretion in value and regarded as part of the compensation itself which is not the case of interest u/Sec.34, with a clear statement, I would have no difficulty in saying that any component of compensation that goes towards the discharge of the liability u/Sec.28 must be taken as part of the compensation to which Sec.194 LA shall apply.

14. Further I relied judgment of Punjab and Hariyana High Court in Civil Revision Petition No.7740 of 2012 and Civil Revision petition No.7736 of 2010 in case of Jugarlal Singh and another v/s. State of Hariyana and another, it was held as under:

**While any deduction made under TDS will not cause any serious prejudice even if the amount ought not to have been deducted by enabling a party applying for**

**refund, if, it might involve a large number of cases, it shall be quite unnecessary for land owners to be directed to apply for income tax for refund in every case. Such a requirement is a needless circuitous exercise. What can be prevented even in the first place by not requiring a TDS to be applied for compensation relatable to Section 23 (IA), 23(2) and 28 of the [Land Acquisition Act](#), in respect of the acquisition of agricultural land, it shall not be unnecessarily gone through.**

**There shall be a direction to the Collector not to make such TDS for deposit of money in Court in satisfaction of the award. A shortfall in the amount in the above cases is directed to be made good by depositing of the same and it shall be open to the Collector to obtain refund of the amount remitted to TDS account, without any such legal requirement from the Income Tax Department, in accordance with law.**

15. Thus, interest awarded u/Sec.28 of the L.A.Act 1894, would partake the component of enhanced compensation and when applied to the facts on hand. Hence, it is clear that the Judgment Debtors have committed error in deducting TDS amount of Rs.12,89,657/- while depositing the award amount passed in LAC.No.251/1994. Absolutely, Judgment Debtors have no locus standi or prerogative to deduct the TDS amount towards the component of the compensation payable u/Sec.28 of the Land Acquisition Act, 1894. As such, the objection filed by the Judgment Debtors cannot be accepted. On the other hand, the balance shown in the memo of calculation filed by the Decree Holder is to be payable. In view of above said facts and law deduction of TDS to agricultural land does not arise. In the present case parties have not disputed that acquired land is agricultural land. Accordingly, I answered point No.1 in the **"Negative"**.

16. **Point No.2:** In view of above said reasons, I proceed to pass following:

**ORDER**

The Judgment Debtor not entitled to deduct tax at source on interest payable on the enhanced compensation.

Further directed to be made good by depositing of the same along with calculation on the date of deposits within outer limit of one month.

(Dictated to the Stenographer, transcribed by her, transcript revised by me, corrected, signed and then pronounced in the Open Court on this **28<sup>th</sup> day of July, 2022**)

**(Mahantesh S. Daragad)**

Addl. Senior Civil Judge  
Karwar.