HIGH COURT OF MADHYA PRADESH

I.T.A. No.88 / 2017

Jabalpur, Dated 10/01/2018

Shri Mukesh Agrawal, learned counsel for the appellant.

Shri Sanjay Lal, learned counsel for the respondents.

Heard on the question of admission.

This appeal has been filed by the appellant under Section 260-A of the Income Tax Act, 1961 being aggrieved by order dated 19.1.2017 passed by the Income Tax Appellate Tribunal, Jabalpur in ITA No.103/JAB/2016, for referring the following substantial questions of law for decision to the Tribunal:-

> "(b) Whether the appellant was required to deduct tax at source under section 194 LA of the Income Tax Act, wherein explanation to Section 194 LA of the Act specifically exempts TDS on the payment made for acquisition of agricultural land?; and
>
> (c) Whether under Section 194 LA of the Act, an obligation can cast on a person

distributing compensation to deduct tax at source only in respect of payment for immovable property whereas such immovable property does not include agricultural land irrespective of its location?”

The learned counsel for the appellant submits that the land acquired by the Jabalpur Development Authority, for the purpose of bus stand and other purposes, was agricultural land at the time when it was acquired. It is submitted that the appellant had filed the documents to establish this fact but neither the Assessing Authority nor the Appellate Authority or the Tribunal has addressed this issue and recorded a finding in this regard. It is submitted that a finding on this issue and an application of mind to the same was necessary on account of the fact that the appellant is not required to deduct tax at source under Section 194-LA of the Income Tax Act, in case of acquisition of agricultural land. It is submitted that this aspect, though raised by the appellant before the Appellate Tribunal, has not been adverted to or considered by the authority, hence this appeal.

The learned counsel for the Revenue, on the other hand, points out that the appellant did not raise this issue or ground before the Commissioner, Appeals and raised it for the first time before the Appellate Tribunal and in such circumstances the same was not required to be adverted to.

Having heard the learned counsel for the parties at length we are of the considered opinion that as the Tribunal is the final fact finding authority and as the appellant had raised this issue before the Tribunal, it was required to address itself to the said issue and record a finding on that count more so as a decision on the aforesaid issue/ground would go to the root of the matter and was necessary for adjudicating the dispute.

In the circumstances, we find the aforesaid questions of law namely; the substantial questions of law “b & c” do arise for consideration in the present appeal and in view of the facts and circumstances of the case we consider and decide the same in favour of the appellant.

Consequently, the appeal filed by the appellant is allowed and the impugned order dated 19.1.2017 passed by the Income Tax Appellate Tribunal,

Jabalpur in I.T.A No.103/JAB/2016 is set aside and the matter is remitted back to the Income Tax Appellate Tribunal for reconsideration and decision of the matter after duly taking into consideration the aforesaid issue/ground raised by the appellant.

It is made clear that this Court has not expressed any opinion on the aforesaid issue on merit and therefore, the Tribunal would be at liberty to decide the matter after taking all the facts and facets into consideration.

With the aforesaid direction/observation the appeal filed by the appellant stands allowed and disposed of.

C.C. as per rules.

(Ravi Shankar Jha)
Judge

(Nandita Dubey)
Judge

SJ

Digitally signed by SUSHEEL KUMAR JHARIYA
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