

## **Land acquired by mutual negotiation between parties won't attract TDS under sec. 194LA**

**Summary – The High Court of Chhattisgarh in a recent case of Naya Raipur Development Authority, (the Assessee) held that where assessee had acquired land under Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973 by mutual negotiation hence, same could not be treated, as compulsory acquisition and provision of section 194LA would not be applicable.**

### **Facts**

- The assessee acquired land in Raipur and paid consideration to the land owners. However, no tax was deducted at source.
- The Assessing Officer issued notices to the assessee on for furnishing information regarding deduction of TDS amount as per the provisions of section 194LA.
- The assessee filed its return denying its liability to deduct TDS as well as applicability of section 194LA.
- The Assessing Officer rejected the claim of the assessee and held that :
  - The property acquired by the assessee was not an agricultural property;
  - The acquisition was a compulsory acquisition, and
  - Section 194LA is applicable.
- On the basis of the aforesaid finding, the Assessing Officer held the assessee to be in default under section 201. The TDS tax liability was assessed alongwith interest under section 201(1A).
- On appeal, Commissioner (Appeals) affirmed, the findings as well as liability recorded by the Assessing Officer was affirmed.
- On further appeal before the Tribunal, the same was allowed by holding that there was no compulsory acquisition and as such section 194LA was not applicable. However, the Tribunal did not decide the other question namely, whether the property was agricultural property or not.
- On appeal:

### **Held**

- There is no dispute between the parties that in the instant case, the property was not acquired under the LA Act and it was acquired only by agreement.
- In case the property is acquired by agreement, then the price is not fixed by the statute. It is settled by the parties. The second condition of compulsory acquisition is not satisfied. The acquisition of the property by the assessee cannot be said to be a compulsory acquisition.
- The fact that after the mutual agreement between the parties, the price was stated in a notification by the assessee, does not make it a compulsory acquisition. No one was bound by that in case of disagreement, the assessee had to proceed under the LA Act. Here, this was no done; all agreed to pay the price fixed by mutual agreement.

- Conclusions are as follows:
  - In case of compulsory acquisition the seller has neither option to opt out of the acquisition nor can he negotiate the price. It is fixed by the statute or is determined under the principles stated therein;
  - In the instant case, price was neither fixed by the statute nor by the principles stated therein but was agreed by the mutual negotiation;
  - The Tribunal has rightly held that there was no compulsory acquisition; and
  - Section 194LA was not applicable.
  - In view of our conclusions, the tax case has no merit. It is dismissed.