

[Interest Not Leviable For Belatedly Deducting TDS If There Is No Liability: Kerala High Court](#)

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

GOPINATH P; J.

WP(C) NO. 20430 OF 2021; 15 September 2022

SPECIAL TAHSILDAR LAND ACQUISITION (GENERAL) versus GOVERNMENT OF INDIA

Petitioner: Adv. Thushara James (Sr GP)

Respondents: Advs. Christopher Abraham, Income Tax Department, T.V. Vinu

J U D G M E N T

The Special Tahsildar Land Acquisition (General), Malappuram has filed this writ petition being aggrieved by the demand for payment of interest under sub-section (1A) of Section 201 of the Income Tax Act, on account of delayed remittance of TDS deducted from compensation paid to persons from whom land was acquired for the purposes of establishing the Government Medical College at Manjeri. It is not in dispute that the amounts were deducted in the month of January 2014 and the amounts were to be paid over to the Income Tax Department on or before 07.02.2014. It is also not in dispute that the amounts were actually paid only on 30.06.2014. It is the case of the petitioner that the officer then holding the charge of Special Tahsildar Land Acquisition (General), Malappuram was deputed for election duty during the period from January 2014 to May 2014 in connection with the General Elections to the Lok Sabha, 2014. A certificate issued by the Deputy Collector (Election), Malappuram has been annexed to the writ petition as Ext.P1, to confirm this fact.

2. Smt.Thushara James, the learned Senior Government Pleader appearing on behalf of the petitioner contends that the levy of interest under sub-section (1A) of Section 201 is clearly unwarranted, in the facts and circumstances of this case. It is submitted that a reading of the provisions of Section 201 clearly indicate that the liability to deduct tax and to pay it to the Income Tax Department is only in respect of sums for which the provisions of the Act require a tax to be deducted at source. It is submitted that the lands, which were subject matter of acquisition were agricultural lands excluded from the definition of capital assets under Section 2(14) of the Income Tax Act and since these lands fell outside the definition of 'capital asset', there was no question of deducting any TDS in respect of compensation paid to the land owners. It is submitted that in respect of the land owners in question, the Income Tax Department itself had effected refund of the amounts paid as TDS. It is submitted that this is clear from Exts.P5 to P8 annexed to the writ petition.

3. Sri.Christopher Abraham, the learned Standing Counsel appearing for the respondent Department vehemently opposes the relief sought in the writ petition. He points out from the provisions of Section 201 of the Income Tax Act that the levy of interest is statutory and it is clear from a reading of subsection (1A) of Section 201 that the moment there is delay in payment of tax deducted, interest has to be levied. It is submitted that taking into consideration the overall facts and circumstances of the case, no penalty was levied under Section 221 in respect of the default committed by the petitioner. It is also submitted that the question as to whether the land in question was actually agricultural land falling outside the definition of capital asset for the purposes of the Income Tax Act and as defined in Section 2(14) of the said Act is to be the subject matter of inquiry and merely because refunds have been granted to the land owners in question, it cannot be said that the lands in question are agricultural lands falling outside the definition of capital

asset under Section 2(14) of the Income Tax Act. The learned Standing Counsel also submits that the fact that the petitioner had actually remitted the tax deducted on 30.06.2014 shows that interest was to be levied in terms of sub-section (1A) of Section 201 of the Income Tax Act. He also submits that on refund to the respective tax payers, the Income Tax Department had to pay interest even from a date prior to the date on which the amounts were actually paid to the Department.

4. The learned Senior Government Pleader in reply again refers to the provisions of Section 201 and places emphasis on the language used in sub-section (1) of Section 201, which indicates that the levy of interest under sub-section 1A of Section 201 can only be on a person who is required to deduct any sum in accordance with the provisions of the Act. It is submitted that since the Income Tax Department itself had refunded the amount of TDS as is evident from Exts.P5 to P8, it cannot be said at this point of time that the land in question was not agricultural land falling outside the definition of Capital Assets under Section 2(14) of the said Act. The learned Senior Government Pleader also relied on the judgment of a three bench of the Supreme Court in **Dwarka Nath v. Income-Tax Officer [AIR 1966 SC 81]** where, considering the power of High Court under Article 226 of the Constitution of India, the Supreme Court observed as follows:

6. This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T.C. Basappa v. Nagappa and Irani v. State of Madras.

She also points out that while considering the matter in Ext.P3, the Principal Chief Commissioner, Income Tax has in paragraph 5.3 of Ext.P3 found as under:

"It is contended that the petitioner has inadvertently deducted TDS. If that were so, the proper course for him would be return such TDS to the awardees, which has not been done in this case. Further, the petitioner has also not remitted such tax deducted into Government account within the applicable time limits."

It is submitted that the fact that the amounts, which were actually paid to the Income Tax Department, were refunded will itself show that the amounts were not to be deducted under the provisions of the Income Tax Act.

Having heard the learned Senior Government Pleader appearing for the petitioner and the learned Standing Counsel appearing for the respondent Department, I am of the view that this writ petition is only to be allowed. It is clear from a reading of Section 201 that the liability to deduct tax arises only when it is required to be deducted under the provisions of the Act. In other words, where there is no liability to deduct TDS, the mere fact that TDS was so deducted and paid to the Income Tax Department belatedly, cannot

give rise to a claim for interest under sub-section (1A) of Section 201 of the Income Tax Act. I feel that this can be the only reasonable interpretation that can be placed under the provisions of Section 201, as interest under sub-section (1A) of Section 201 is obviously to compensate the Government / Income Tax Department for the delay in payment of taxes, which are rightfully due to the Government. I must also note that it is clear from Ext.P1 that the delay in remitting the amounts deducted as TDS arose only on account of the fact that the Officer in question was deputed for election duty for the period from January 2014 to May 2014 in connection with the Lok Sabha Election of 2014. Cumulatively, these facts compel me to hold that the levy of interest under sub-section (1A) of Section 201 was wholly unwarranted in the facts and circumstances of this case. The contention that the Income Tax Department had to pay interest on refund amount from a date prior to the date on which the Department received amounts is untenable. The Department was under no obligation to pay interest from a date prior to the date on which it actually received the amounts of TDS. The writ petition is, therefore, allowed. Exts.P2 and P3 will stand quashed. No costs.

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