IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

Sl. No.	ITA No.	AY	Appellant	Respondent
1 & 2	2188 & 2189/Hyd/2017	2013-14 & 2014-15	The Singareni Colleries Company Ltd., Kothagudem	Asst. Commissioner of Income-tax, Circle – 1, Khammam

Assessee by:	Shri M.V. Anil Kumar
Revenue by:	Shri R. Dipak
Date of hearing:	19/04/2021
Date of pronouncement:	27/05/2021

O R D E R

PER L.P. SAHU, AM:

Both these appeals filed by the assessee are directed against the CIT(A) - 7, Hyderabad's separate orders, both dated, 19/09/2017 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act". As the facts and grounds raised in both these appeals are identical, the same were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2. In both these appeals, the assessee has raised a common ground pertaining to disallowance made u/s 40(a)(a) on account of non-deduction of tax at source on

interest payments, which is raised as ground Nos. 1 to 4 in AY 2013-14 and as ground nos. 1 to 8 in AY 2014-15.

3. The facts relating to this issue as taken from AY 2013-14 are that the AO made disallowance of Rs. 86,81,487/- being interest on land compensation deposited with courts and deposited with revenue officer. The CIT(A) following the decision in AYs 2011-12 and 2012-13 in assessee's own case, confirmed the disallowance made by the AO.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. After hearing both the parties and perusing the material on record as well as gone through the orders of revenue authorities, we find that similar issue arose before the ITAT in assessee's own case for AYs 2009-10 to 2011-12 in ITA Nos. 886 & 887/Hyd/2014 and 561/Hyd/2016 vide order dated 20/05/2021, the coordinate bench of this Tribunal, wherein both the Members are party, held as under:

> *"9.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee has deposited the interest as per the court directions on the enhanced compensations to be paid to the pattadars. There is no doubt that the assessee was much aware in regard to the payment of interest to the pattadars, but, the assessee has*

not paid directly to the pattadars. From the submissions made by the assessee, it is clear that this amount has to be deposited as per the directions of the Court order. A circular has been issued by the Board in regard to the responsibility of the TDS deduction on the interest payment on compensation/enhanced compensation which is as under:

"18/05/2021 Circular No. 526, dated 05-12-1988

1055. Whether interest payments under Land A cquisition Act are covered by section 194A

1. *According to section 194A of the Income-tax Act, 1961, any person, not being an individual or HUF, who is responsible for paying to a resident any income by way of interest other than income by way of "Interest on securities" shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force. The provisions contained therein are however subject to the exceptions provided in the said section. According to the provisions of section 200 of the Income-tax Act, any person deducting any sum in accordance with the provisions of section194A shall pay, within the prescribed time, the sum so deducted to the credit of Central Government. If he fails to deduct tax at source or after deducting fails to pay the tax to the credit of Central Government, he shall be liable to action in accordance with the provisions of section 201. In this connection attention is also invited to the provisions of section 276B of the Income-tax Act, as substituted by the Direct Tax Laws (Amendment) Act, 1987 according to which if a person fails to pay to the credit of the Central Government the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years and with fine.*

2. *It has come to notice that various State Development Authorities, the Housing Boards, Public Works Department, etc., acquire immovable property from the public for the purpose of their developmental activities. Huge amounts are disbursed on behalf of these departments as payments of compensation for land acquired including considerable amount of interest on excess compensation as per the Land Acquisition Act.The interest payment made under the Land Acquisition Act are covered by the provisions of section 194A. As a result tax will have to be deducted at source under section 194A from the interest payments made to the public under the Land Acquisition Act.*

Circular : *No. 526, dated 5-12-1988.*

JUDICIAL ANALYSIS

EXPLAINED IN - In Special Tehsildar and Land Acquisition Officer v. Dandu Saraswatamma [1994] 205 ITR 587 (AP), the Commissioner addressed a D.O. letter dated 1-3-1987 to the then Revenue Secretary requesting him to issue instructions to all the officers concerned with land acquisition to deduct income-tax on payment of interest and to follow the provisions as laid down under section 194A and other provisions of the Act. In paragraph 2 of that D.O. letter, it was stated that while paying interest, income-tax was deductible at the rates in force during that financial year with effect from 1-4-1975, if the amount exceeded Rs. 1,000.

Pursuant to those instructions, the Land Acquisition Officers, while depositing the enhanced compensation amounts in various execution petitions filed before the Subordinate Judge, Kovvur, had deducted income-tax on the interest accrued on the compensation amount.

The Court held that the Supreme Court in Rama Bai v. CIT [1990] 181 ITR 400 held that the interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act awarded by the Court on a reference under section 18 of the Land Acquisition Act or on further appeal has to be

taken to have accrued not on the date of the order of the Court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order and such interest cannot be assessed to income-tax in one lump sum in the year in which the order is made. The above decision of the Supreme Court in Rama Bai's case (supra) has set at rest the conflict of decisions among some High Courts on the above issue. The effect of the decision of the Supreme Court referred to above is that on the enhanced compensation, for land compulsorily acquired under the Land Acquisition Act, awarded by the Court on a reference under section 18 of the Land Acquisition Act, interest is payable to the claimants. If so, section 194A of the Act empowers the person who is responsible for making the payment to deduct income-tax. But the direction given in the D.O. letter dated 1-3-1987, of the Commissioner of Income-tax stating that while paying interest, income-tax was deductible at the rates in force during that financial year (Emphasis supplied) with effect from 1-4-1975, if the amount exceeded.Rs. 1,000 was not and could not be valid. Such a direction did not get support from section 194A under which Department sought deduction of income-tax at source.

The proviso to section 194A of the Act empowers the assessee to receive the income by filing an affidavit or statement in writing declaring that his estimated total income assessable to tax for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income-tax. The orders under revision did not disclose the break-up in each execution petition about the compensation amount awarded and the interest payable thereon. The orders also did not disclose as to when possession of the land concerned in each execution petition was taken by the Government and the date of depositing the compensation amount. In the absence of those details, it was not possible to determine whether the

individual claimants were liable to pay income-tax or not.
In view of above it was further held that Circular No. 526, dated 5-12-1988, which is on same line as D.O. stated above, will not have binding effect on Civil Court unless provisions of the Act are made applicable.

CLARIFICATION TWO

I am directed to say that it had recently come to the notice of the Board that there was no uniform practice in vogue in the matter of the deduction of tax at source from interest payments awarded by the Courts of Law in land acquisition cases. At certain places such deduction was being made by the land acquisition authority who was responsible for paying the compensation (along with interest) to the persons whose land had been acquired under the Land Acquisition Act, while at other places, such deduction was being made by the Court of Law which awarded the compensation (with interest), after the concerned authority had deposited the entire amount with the Court, for payment to the concerned parties in accordance with the decree passed by the Court. In the latter case, it is observed that certain Courts were seeking assistance of the concerned Income-tax Authorities for effecting tax-deduction at source.

2. *It has now been decided in consultation with the Ministry of Law & Justice that the responsibility for making deduction of tax at source undersection 194A of the Income-tax Act, 1961, should be that of the Collector (Land Acquisition) or any other authority empowered under the Land Acquisition Act, 1894, to acquire land for the public purpose as laid down by that Act. When the concerned parties, whose land has been acquired, go to the Court of Law, seeking higher compensation (with interest) and the Court allows their claims the concerned authority which had acquired their land, shall, while*

paying the compensation, deduct tax at source from the amount of interest forming part of the compensation ,and deposit the remaining amount with the Court of Law, for disbursement to the successful litigants. The same authority shall also issue the TDS certificates to the concerned parties in the prescribed Form 16A.

Order : *F.No. 275/109/92-IT(B), dated 21-9-1994. ANNEX - MINISTRY OF LAW, JUSTICE & C.A. (DEPARTMENT OF LEGAL AFFAIRS) ADVICE (B) SECTION*

The question for consideration is as to who is the person responsible for deduction of tax at source for the purpose of section 204 of the Income-tax Act, 1961 in the case of payment of compensation under the Land Acquisition Act. A prima facie view was expressed by us in the matter on the assumption that Collector, Land Acquisition is the person making payment and as such he is responsible for making deduction at source in terms of section 204(iii) of the Income-tax Act. However, we had requested the Department to confirm the factual position from the Ministry of Rural Development. The Department of Rural Development have stated that the person responsible for payment of compensation under Land Acquisition Act is the Collector. In Baldeep Singh v. UOI [1993] 199 ITR 628 the Punjab and Haryana High Court held that "the Court is not the person responsible for paying any income by way of interest...As per the legal incidents, the legal person responsible for paying income by way of interest is the Land Acquisition Collector who had the money in his possession and was responsible for making the payment of that income to the petitioners....The Court is acting only as a conduit for getting the payment to the petition er in execution of a decree passed in his favour." In view of the above, we confirm the views expressed by us earlier, referred to above.

The Administrative Department have stated that while there may be no objection to TDS being made by Collector, in such cases a practical difficulty that may arise is that the Collector would be required by the court to deposit the entire amount of compensation and interest with it and if the Collector deducts tax from that amount it would be regarded as disobedience of the Court's order.

In this connection the following observation made by the Supreme Court in Lt. Col. K.D. Gupta v. UOI [1989] 46 Taxman 124 is considered very relevant :

"We see no justification to initiate any contempt proceeding against the respondents for withholding a sum of Rs. 1,20,000 out of the sum of Rs. 4 lakhs directed to be paid to the petitioner. Rs. 1,20,000 have been withheld on the plea that under Chapter XVII of the Income-tax Act, 1961 ('the Act'), the Union of India has the obligation to deduct income-tax at source. The intention of the payer in the facts of the case for withholding the amount cannot be held to be either mala fide or is there any scope to impute that the respondents intended to violate the direction of this Court."
If out of the decretal amount the Land Acquisition Officer pays the TDS amount to the Central Government and deposits only the balance amount with the Court, in view of the aforesaid ruling, the Court may not hold it as disobedience of its orders.

9.6 Later on the Board has also issued a Circular a CIRCULAR NO. 8/2011 [F.NO. 275/30/2011- IT (B)], DATED 14-10-2011 [SUPERSEDED BY CIRCULAR NO. 23/2015, DATED 28-12-2015].

9.7 In this regard, we also refer to section 145A(b) is as under:

"Interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be in the income of the year in which it is received."

9.8 Now coming to the case on hand, it is clear that the assessee has deposited the amount with the Court, but, it has not actually paid to the actual recipients directly i.e., pattadars. On analysis of the above cited section and Circulars, it is clear that the assessee is not responsible for deducting tax deduction at source and assessee is also not sure that when the amount shall be paid to the actual recipients/pattadars. In our considered opinion, the addition made in this regard is not sustainable in the eyes of law and, therefore, the addition is deleted. Accordingly, grounds raised on this issue are allowed in favour of the assessee."

5.1 Respectfully following the conclusions drawn as above in assessee's own case (supra), we delete disallowance made by the AO u/s 40(a)(ia) in both the years under consideration and the grounds raised on this issue in both the AYs are allowed.

6. As regards ground No. 5 in AY 2013-14 and ground No. 8 in AY 2014-05 regarding depreciation on plant and machinery, the AO allowed depreciation @ 10% treating it as 'building' as against the assessee's claim of 15% as plant & machinery. The CIT(A) following the decision in earlier AYs 2011-12 and 2012-13, confirmed the action of AO.

7. After considering the rival submissions and perusing the material on record as well as going through the orders of the revenue authorities, we find that

similar issue arose before the ITAT in assessee's own case for AY 2011-12 in ITA No. 561/Hyd/2016 wherein the coordinate bench has held as under:

> *"11.4 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The assessee is engaged in the business of coal mines and he is extracting coal from open cast mines as well as underground mines. As per details submitted by the AR of the assessee during the course of assessment proceedings and appellate proceedings, it is clear that the expenditure incurred by the assessee are to be treated as 'plant and machinery'. The civil works are relating to directly for the excavation of coal. Without doing these jobs, it is difficult to extract the coal from the mines. From the details submitted, it is clear that the expenditure incurred by the assessee company on construction of retaining wall for sand stowing, Dumper Working Platform, Construction of RCC Bridges, Land levelling, Sand Stowing, Bunker Stowing, construction of Inter Seam Tunnels, Construction of Steel Bunkers, Construction of Water Dams, construction of water tankers for sand stowing, building retention wall for sand stowing, construction bunkers in mines for workers, construction of check dams in mines to prevent water gushing etc. The entire expenditure was incurred within the mines, which are categorized as plant and machinery for the purpose of depreciation. Functionally the expenditure assumes the nature of plant and machinery in the coal mines. The rate of depreciation has been prescribed as per new Appendix – I – Part – A on tangible assets. Looking at the nature of business of the assessee the mine development expenditures spent by the assessee are to be treated as plant & machineries. There can be different type of expenditures for the*

different nature of business. In the Income Tax Act, the word "plant & machinery" has not been defined, but, the various courts have defiled the plant and machinery as per the conditions existed in given cases. Further on perusal of the submission of the AR of the assessee it has been observed that in assessee's own case while granting investment allowance U/s 32A of the IT Act, similar expenditures incurred by the assessee under the head "plant and machinery" were decided in favour of the assessee and held that it was plant and machinery by the Hon'ble jurisdictional AP High Court as relied upon by the assessee. Further the assessee has relied on the decision of the Hon'ble SC in case of Karnataka Power Ltd. as quoted supra is squarely applicable to the facts of the present case. The Ld. CIT (A) has not accepted this judgement of Hon'ble SC holding that it relates to Investment Allowance U/s 32A of the Income Tax Act, 1961. Once similar expenditures have been accepted by the Hon'ble SC as quoted supra , we are of the view that the expenditures incurred by the assessee were necessary for excavation of coal from mines and shafts . In view of the above observations, we allow this ground of appeal of the assessee by holding that the assessee is entitled to charge depreciation @ 15% under the block of assets "plant and machinery", as against 10% made by the AO."

7.1 Respectfully following the said decision, we allow this ground of appeal of the assessee by holding that the assessee is entitled to charge depreciation @ 15% under the block of assets "plant and machinery", as against 10% made by the AO. This ground of appeal raised in both the appeals under consideration is allowed.

8. As regards ground No. 6 relating to the addition of Rs. 51,539/- in AY 2013-14 is concerned, the assessee incurred the said expenditure by way of penalty or fine for violation of any law for the time being in force. Since the assessee failed to substantiate the said expenditure with documentary evidence, the AO made the addition, which was confirmed by the CIT(A).

9. The submissions of the assessee is that these are the payments made to various state government departments for delay in submission of form or document or compliance with the procedures, in which case, the payment is not for violation of law but compensation for not complying with law and allowable expenditure as normal business expenditure u/s 37(1) of the Act. We are in agreement with the submissions of the assessee and, therefore, we direct the AO to delete the addition made on this count. Accordingly, this ground of appeal is allowed.

10. As regards the ground No. 9 in AY 2014-15 relating to deduction u/s 234C, charging interest under this section is consequential in nature and, therefore, the AO is directed accordingly.

11. In the result, both the appeals under consideration are allowed in above terms.

Pronounced in the open court on 27th May, 2021.

Sd/-	Sd/-
(S.S. GODARA)	(L.P. SAHU)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Hyderabad, dated 27th May, 2021

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1	*The Singareni Colleries Company Ltd., C/o. M. Anandam & Co., CAs, Flat No. 7A, Surya Towers, SD Road, Scunderabad – 500 003.*
2	*ACIT, Circle – 1, Khammam.*
3	*CIT(A), Vijayawada.*
4	*CIT, Vijayawada.*
5	*ITAT, DR, Hyderabad.*
6	*Guard File.*

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