

## **No denial of sec. 10(37) exemption if compensation amount of agricultural land was settled after negotiation: SC**

**Summary – The Supreme Court of India in a recent case of Balakrishnan., (the Assessee) held that where assessee's agricultural land was compulsorily acquired by following entire procedure prescribed under Land Acquisition Act, merely because compensation amount was agreed upon after negotiation between parties would not change character of acquisition from that of compulsory acquisition to voluntary sale so as to deny exemption under section 10(37) to assessee**

### **Facts**

- The Government of Kerala acquired the agricultural land of the assessee for the public purpose, namely, '3rd phase of development of Techno Park' under the Land Acquisition Act, 1894. (LA Act).
- The Land Acquisition Collector passed the award fixing compensation at certain amount which was not acceptable to the assessee.
- Some negotiations started between the parties on the amount of compensation and ultimately it was agreed by the Techno Park, for whom the property in question was acquired, to pay an enhanced amount. Thereafter, the assessee executed a sale deed of the property in question in favour of Techno Park.
- While disbursing the aforesaid amount of sale consideration, the Techno Park deducted 10 per cent of the amount of TDS and it was later refunded to the assessee by the department taking a view that no capital gain was payable on the aforesaid amount as the same was exempted under section 10(37).
- The assessment of assessee was completed on that basis. However, thereafter, the Assessing Officer reopened the assessment on the ground that the amount of compensation/consideration received by the assessee against the aforesaid land was not the result of compulsory acquisition and on the contrary it was the voluntary sale made by the assessee to the Techno Park and, therefore, the provisions of section 10(37) were not applicable. The Assessing Officer completed reassessment accordingly.
- The Single Judge dismissed assessee's writ petition.
- The writ appeal filed by the assessee met the same fate.
- On appeal to the Supreme Court:

### **Held**

- The acquisition process was initiated by invoking the provisions of LA Act by the State Government. For this purpose, not only Notification under section 4 was issued, it was followed by declaration under section 6 and even award under section 9 of the LA Act. With the award the acquisition under the LA Act was completed. Only thing that remains thereafter was to pay the compensation as fixed

under the award and take possession of the land in question from the appellant. No doubt, in case, the compensation as fixed by the Land Acquisition Collector was not acceptable to the appellant, the LA Act provides for making a reference under section 18 of the said Act to the District Judge for determining the compensation and to decide as to whether the compensation fixed by the Land Acquisition Collector was proper or not. However, the matter thereafter is only for quantum of compensation which has nothing to do with the acquisition. It is clear from the above that insofar as acquisition is concerned, the appellant had succumbed to the action taken by the Government in this behalf. His only objection was to the market value of the land that was fixed. To reiterate his grievance, the appellant could have either taken the aforesaid adjudicatory route of seeking reference under section 18 of the LA Act leaving it to the Court to determine the market value. Instead, the appellant negotiated with Techno Park and arrived at amicable settlement by agreeing to receive the enhanced compensation. For this purpose, after entering into the agreement, the appellant agreed to execute the sale deed as well which was a necessary consequence and a step which the appellant had to take.

- Insofar as acquisition of the land is concerned, the same was compulsorily acquired as the entire procedure prescribed under the LA Act was followed. The settlement took place only *qua* the amount of the compensation which was to be received by the appellant for the land which had been acquired. It goes without saying that had steps not been taken by the Government under sections 4 & 6 followed by award under section 9 of the LA Act, the appellant would not have agreed to divest the land belonging to him to Techno Park. He was compelled to do so because of the compulsory acquisition and to avoid litigation entered into negotiations and settled the final compensation. Merely because the compensation amount is agreed upon would not change the character of acquisition from that of compulsory acquisition to the voluntary sale. It may be mentioned that this is now the procedure which is laid down even under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as per which the Collector can pass rehabilitation and resettlement award with the consent of the parties/land owners. Nonetheless, the character of acquisition remains compulsory.
- As a result, the appeal of the assessee is allowed and proceedings under section 148 are quashed.