

24-11-2021
Item No.54
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate side

WPA No.17146 of 2021
Tyroon Tea Company Limited & Anr.
-vs-
Union of India & Ors.

Mr. Pratyush Jhunjhunwala
Mr. Deepak Jain ...for the petitioners

Mr. Dhiraj Trivedi
Mr. Madhu Jana ...for the income-tax authorities

Heard learned advocates appearing for the parties.

In this writ petition, petitioners have challenged the constitutional validity and legality of section 194N of the Income Tax Act, 1961 which mandates the deduction of tax at source at the rate of 2% on cash withdrawals from, inter alia, a banking company exceeding Rs.1 crore in a financial year and the said section was inserted by the Finance Act, 2019 and became effective from September 1, 2019 and has been substituted by the Finance Act, 2020. Petitioners submit that section 194N of the said Act is beyond the legislative competence of the Parliament and Entry 82 of List I of Schedule VII to the Constitution allows the Parliament to enact laws for imposition, collection and levy of tax on "income" and the Parliament cannot legislate a provision stipulating the deduction of tax at source from an amount which is admittedly not income and such legislation would be beyond the legislative competence of the Parliament under Entry 82 of List I of Schedule VII of the Constitution. Petitioners have challenged the impugned legislation on several grounds as appears from the grounds of the writ petitioner which, according to me, have some substance and requires consideration for final adjudication by this court. Petitioners have also relied on several

unreported decisions of the Hon'ble Kerala High Court involving the same issue and one of which is an order dated August 13, 2020 passed in Kanan Devan Hills Plantations Company Pvt. Ltd. v. Union of India in WP(C) No.1658 of 2020 where the Hon'ble court has admitted the writ petition on this issue and has granted interim stay of deduction of tax on source under section 194N of the Income Tax Act, 1961.

The petitioners also rely on my previous orders dated July 8, 2021 in WPA No.10826 of 2021 (Amalgamated Plantations Pvt. Ltd. Anr. v. Union of India & Ors.) and dated September 29, 2021 in WPA No.15754 of 2021 (Hasimara Industries Limited & Anr. v. Union of India & Ors.) where on the same issue I have admitted the writ petitions and granted the interim order. I have been informed that the respondents have not filed any appeal against the aforesaid two orders.

Considering these facts, I am inclined to grant an interim order restraining the respondent-authorities concerned from deducting tax on source on the basis of the aforesaid provisions of section 194N till February 7, 2022, or until further orders, whichever is earlier.

Benefit of this interim order will be confined only to the writ petitioners herein.

Respondents are directed to file affidavit-in-opposition within four weeks. Petitioners to file reply thereto, if any, within one week thereafter.

List the writ petition for final hearing on January 21, 2022.

[Md. Nizamuddin, J]

