

S/L 25
08.07.2021
Court. No. 2
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WPA 10856 of 2021

Apeejay Tea Ltd. Anr.
Vs.
Union of India & Ors..

(Through Video Conference)

Mr. Avra Mazumdar
Mr. Pratush Jhunjhunwal
Ms. Sudeshna Mazumdar
Ms. Riya Bhattacharjee

...For the petitioners

Mr. Y.J. Dastoor, A.S.G.
Mr. Soumen Bhattacharjee

For the U.O.I.

Heard Mr. J.P. Khaitan, learned senior advocate appearing for the petitioner and learned Additional Solicitor General for the respondents/U.O.I.

In this writ petition, petitioner has 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 1st September, 2019 and has been substituted by the Finance Act, 2020. Petitioner submits 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. Petitioner has challenged the impugned legislation on several grounds as appears from the grounds of the writ petition which according to me have some substance and requires consideration for final adjudication by this Court. Petitioner has also relied on several unreported decisions of the Hon’ble Kerala High Court involving the same issue and one of which is order dated 13th August, 2020 passed in *Kanan Devan Hills Plantations Company Pvt. Ltd Versus Union of India* in WP (C) No. 1658 of 2020 where 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. On earlier occasion opportunity was given to the respondents to seek instruction as to whether the aforesaid order of the Kerala High Court has been further challenged or not to which learned Additional Solicitor General has submitted on instruction that no further appeal has been filed against the said order and the said interim order is still existing. It has also been submitted that

series of orders have been passed by the Hon'ble Kerala High Court on the same issue admitting the writ petition and staying deduction of tax on source under Section 194N of the Income Tax Act, 1961.

Considering these facts, I am inclined to grant an interim order restraining the respondents authorities concerned from deducting tax on source on the basis of the aforesaid provisions of Section 194N till 30th September, 2021.

Respondents are directed to file affidavit-in-opposition within four weeks from date. Petitioner to file reply thereto, if any, within two weeks thereafter.

Matter to appear for final hearing after eight weeks.

(Md. Nizamuddin, J.)