

GOVERNMENT OF INDIA
MINISTRY OF RURAL DEVELOPMENT
DEPARTMENT OF LAND RESOURCES

LOK SABHA
UNSTARRED QUESTION No. 4343
TO BE ANSWERED ON 11.08.2016

Land Acquisition

4343. SHRI B. VINOD KUMAR:

Will the Minister of RURAL DEVELOPMENT be pleased to state:

- (a) whether it is a fact that Income Tax Department has given instructions for tax deduction from payments to be made to land losers due to irrigation and other development projects which involve land acquisition and if so, the details thereof;
- (b) whether it is not against the provisions of section 96 of the RFCTLARR Act, 2013 which states that compensation awards are IT exempt and violates the rights of land losers ensured under the Act and if so, the details thereof; and
- (c) the steps proposed by the Government for solving the clash between section 96 of RFCTLARR Act, 2013 and section 194LA of the IT Act, 1961 so that the exemption is granted from Tax Deducted at Source (TDS) for land acquisition compensation awards?

ANSWER

MINISTER OF STATE FOR RURAL DEVELOPMENT
(SHRI RAM KRIPAL YADAV)

(a): Section 194LA of the Income Tax Act, 1961 requires that tax be deducted at source from payments in the nature of compensation on account of compulsory acquisition of any immovable property (other than agricultural land). TDS under section 194LA is, thus, a requirement under the law and it does not flow from any instruction of Central Board of Direct Taxes (CBDT).

(b): Certain anomalies between the provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and the Income Tax Act, 1961 have recently been brought to the notice of CBDT. Section 96 of the RFCTLARR Act provides that no income tax shall be levied on any award or agreement made under this Act. It has also been pointed out that since no similar exemption provision exists under the Income Tax Act, the Income Tax Department is taxing the Capital Gain arising from compensation received against acquisition of land. A request has, therefore, been made to remove the said anomaly between the RFCTLARR Act and Income Tax Act by making a suitable enabling provision under Income Tax Act.

Under the Income Tax Act, 1961, compensation received against acquisition of 'agricultural land' by the Government (Central/ State) is exempt from tax under the head 'Capital Gains' except when such land is situated —

- (a) inside the jurisdiction of a municipality/ municipal corporation/ notified area committee/ town are committee etc. or a cantonment board having population of more than 10000;
or
- (b) in any area (measured aerially) which is —
 - i. within 2 km from the local limits of any municipality/ cantonment board which has a population between 10000 to 1 lakh;

- ii. within 6 km from the local limits of any municipality/ cantonment board which has a population between 1 lakh to 10 lakh;
- iii. within 8 km from the local limits of any municipality/ cantonment board which has a population more than 10 lakh.

However, as per section 10(37) of the Income Tax Act, 1961, compensation/ consideration received against compulsory acquisition of any agricultural land situated within the area specified above, which is used for agricultural purpose, shall also be exempt from Income tax. Thus, effectively, compensation received from compulsory acquisition of agricultural land remains exempt from tax under the provisions of the Income Tax Act, 1961. However, similar benefit is not available in case of acquisition of properties other than agricultural land.

On the other hand, section 96 of the RFCTLARR Act, 2013, inter-alia, provides that no income tax shall be levied on any award or agreement made under that Act. The RFCTLARR Act, however, covers not only the agricultural land but also lands/ properties falling in other categories and therefore making its scope much wider. Thus, there is an anomaly between the two Acts regarding the taxability of income (arising from compensation received in lieu of acquisition of land) to the extent the land under consideration falls in non-agricultural category. In other words, if the land under transfer is agricultural, the income remains exempt under the Income Tax Act and the two Acts remain synchronized. Only in respect of land other than the agricultural land for the purposes of the Income Tax Act, the anomaly creeps in since the Capital Gain arising therefrom becomes taxable under the Income Tax Act, while the same is stipulated to be exempt under the RFCTLARR Act.

(c): The matter is under consideration to resolve the above anomaly.
