

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.64 of 2005**

The Oriental Insurance Company Limited, Ambikapur,
Surguja, Through its Divisional Manager, Bilaspur (CG)

---- Petitioner**Versus**

1. Smt.Sita Kunwar, 45 years, Wd/o Late Shri Amar Singh,
2. Shri Dashrath Singh, 23 years,
3. Shri Dhanuk Dhari Singh, 21 years,
4. Shri Hridaynarayan, 18 years, S/o Late Shri Amar Singh,
5. Shri Bharat Lal, aged about 16 years, since minor, through mother and natural guardian
6. Smt.Sita Kunwe,

All by caste- Gond, R/o Nagoi, Raghunath Nagar,
Tahsil-Wadraf Nagar, Surguja (CG)

---- Respondents

For Petitioner : Mr.Raj Awasthy, Advocate

For Respondents : None present though served

Hon'ble Shri Justice Sanjay K. Agrawal**C A V Order****14/08/2015**

1. Impugning the legality, validity and correctness of the order

dated 8.10.2004 passed by the First Additional Motor Accidents Claims Tribunal, Surajpur, in Motor Accident Claim Case No.52/2001, the Insurer/petitioner has filed the instant writ petition stating that the order passed by the Claims Tribunal is not in accordance with law.

2. Imperative facts necessary to judge the correctness of the impugned order states as under:-

2.1 In the claim case filed by the respondents/claimants herein, the Claims Tribunal passed award on 3.5.2002 and thereafter in compliance of the award the petitioner Company deposited the award amount inclusive of interest on 25.6.2003 Rs.25,000/-, on 14.7.2003 Rs.27500/- and by cheque dated 28.5.2003, 11.7.2003 and 24.7.2003 Rs.1,48,612/-, however, the petitioner Insurance Company deducted an amount of Rs.5124/- on payment of Rs.51,236/- made to the respondents/claimants on 24.7.2003 as tax deducted at source under the provisions contained in Section 194-A of the Income Tax Act, 1961 (hereinafter refereed to as 'the Act, 1961').

3. The petitioner/insurer by filing this writ petition has questioned the impugned order stating inter-alia that the petitioner company has only complied with the provisions contained in Section 194-A (3) (ix) of the Act, 1961 and therefore, the order passed by the Claims Tribunal directing the petitioner Company to make the payment of the said amount to the decree-holder/claimants is bad and unsustainable in law. The respondents have neither appeared nor filed their return though served.
3. Mr.Raj Awasthy, learned counsel appearing for the petitioner would submit that the petitioner Company is duty bound to comply with the provisions of the Act, 1961, particularly Section 194-A (3) (ix). He would further submit that the provisions of the Act, 1961 are a fiscal statute and provisions thereunder have to be strictly construed as the consequence has been provided with the Act, 1961 itself and if the T.D.S. is not deducted in conformity with the provisions contained in Section 194-A (3) (ix) of the Act, 1961, then the petitioner Company is liable for penalty contemplated under Section 271-C of the Act, 1961, as such, the Claims Tribunal has committed illegality in holding

and directing the petitioner Company to make payment of tax deducted at source by the impugned order, which is liable to be quashed being contrary to the express provision contained in the Act of 1961.

4. I have heard the learned counsel for the petitioner and perused the record with utmost circumspection.
5. In order to decide the question raised at the Bar, it would appropriate to notice the provisions contained in clause (ix) of sub-section (3) of Section 194-A of the Act, 1961. Section 194-A has been inserted in the Income Tax Act, 1961 by Finance (No.2) Act, 1967 with effect from 1st April, 1967. Sub-section (1) thereof enjoins upon a person, not being an individual or a Hindu Undivided Family, who is responsible for paying to a resident any income by way of interest other than income to deduct income-tax thereon at the rates in force. Clause (ix) of sub-section (3) of the said Section 194-A reads as under:

“to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accident Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the

amount of such income credit or paid during the financial year does not exceed fifty thousand rupees.

Thus, the provisions of Section 194-A of the Act have been specifically made applicable to the interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal. The said clause has been inserted with effect from 1st June, 2003 by the Finance Act, 2003.”

6. From careful examination of the aforesaid provisions, it is quite vivid that when interest is paid by any person, who is not an individual or a Hindu Undivided Family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, he is liable to deduct income-tax at the rate in force. The word ‘interest’ is defined under Section 2(28-A) as:-

“interest” means interest payable in any manner in respect of any moneys borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.”

7. Turing back to the facts of the case, it would quite apparent that the award amount inclusive of interest in the present case has been deposited by the petitioner Company on 25.6.2003, 14.7.2003, 28.5.2003, 11.7.2003 and 24.7.2003 i.e. after 1st June, 2003, the date on which clause (ix) of sub-section (3) of Section 194-A of the Act came into force, which obliges the deducter to make any deduction at source on an amount paid by way of the interest on the compensation awarded by the Motor Accident Claims Tribunal. In view of the specific provisions contained in the Income Tax Act, the petitioner Company was duty bound to deduct the amount of income-tax from the amount of interest deposited with the Motor Accident Claims Tribunal for being disbursed to the respondents/claimants.
8. In the matter of **The New India Assurance Company Limited v. Ramesh Kumar Tamrakar and others**¹, it has been clearly held by this Court that in view of the provisions contained in clause (ix) of sub-section (3) of Section 194-A of the Act, if the interest component of the award had been deposited after 1-6-2003, the Insurance Company is duty

¹2011(2) MPHT 61 (CG)

bound to deduct T.D.S. from the amount of interest paid by it.

9. Thus, in the light of analysis made hereinabove, the Claims Tribunal is absolutely unjustified in holding that the petitioner Insurance Company ought not to have deducted the tax at source from the amount of interest paid to the respondents/claimants, as such, the impugned order dated 8.10.2004 deserves to and is accordingly set aside and it is held that the petitioner Company is absolutely justified in deducting tax at source while making the payment of the award inclusive of the interest.
10. In consequence of the aforesaid discussion, the writ petition deserves to and is accordingly allowed and the impugned order dated 8.10.2004 is hereby set aside. However, this will not bar the respondents/claimants to claim adjustment of the said amount of T.D.S. while submitting their Income Tax Return (if any). No order as to cost(s).

Sd/-
(Sanjay K.Agrawal)
Judge

B/-