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HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 429 of 2015

The Oriental Insurance Company Limited Through Branch Office Raigarh, District Raigarh Chhattisgarh

---- Petitioner

Versus

1. Prabhu Prakash Ekka S/o Matiyas Ekka Aged About 30 Years Caste Uraon
2. Matiyas Ekka S/o Late Khexo Ekka Aged About 54 Years
3. Minor Ku. Ruth Ekka D/o Prabhu Prakash Ekka Aged About 11 Years
4. Minor Ku. Anubha Ekka D/o Prabhu Prakash Ekka Aged About 6 Years

No.3 & 4 are Minor Through Natural Guardian Appellant No. 1, Prabhu Prakash Ekka S/o Matiyas Ekka

R/o Village Budhadad Tahsil Bagicha, District Jashpur Chhattisgarh

5. Fajal Haq S/o Shri Abdul Haq, Aged About 43 Years Occupation Business, R/o Kharsiya Naka Ambikapur, District Surguja Chhattisgarh
6. Surjit Singh @ Sita S/o Mahendra Singh Aged About 50 Years R/o Kedarpur, Ambikapur, District Surguja Chhattisgarh

----Respondents

For Petitioner : Shri Pankaj Agrawal, Advocate

None for respondents 1, 2, 3, 4 & 5.
Notice issued to respondent 6 returned unserved.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

Order on Board

10/12/2015

1. Heard on admission.

2. It is submitted on behalf of the petitioner that a very short question of law is involved whether as per provisions of Income Tax Act, 1961 the petitioner is required to deduct TDS on the amount of compensation and as respondent 6 Surjit Singh @ Sita is owner of the vehicle, the court below vide award dated 5.9.2012 in Motor Accidents Claim Case No.10/2011 (Prabhuprakash Ekka & 3 Ors. Vs. Fajal Haq & 2 Ors.), the Motor Accidents Claims Tribunal (for short 'the MACT'), Jashpur (CG) fastened the liability to satisfy the award on the petitioner and respondent 6 jointly and severally as the petitioner had already satisfied the decree. Hence, with the present facts, respondent 6 is not a contesting party and the matter may be heard finally.

3. On due consideration, it is held that as the petitioner is not claiming any relief from respondent 6, he is not the contesting party and looking to the fact that a very short question of fact and law is involved in the petition, heard the matter finally.

4. As per facts of the case, the Motor Accident Claims Tribunal, Jashpur (CG) as per award dated 5.9.2012 in Motor Accidents Claims Case No. 10/2011 allowed the claim case and the petitioner and respondent 6 are held responsible jointly and severally to satisfy the compensation amount as directed by the MACT as per para 23 of the order. Thereafter, the petitioner has deposited the entire decreetal amount before the executing Court and out of the entire decreetal amount, as per provisions of Section 194 -A (3) (ix) of the Income Tax Act, 1961 deducted the TDS Rs.50,503/- and Rs.5,213/- as interest and the remaining dues were deposited before the executing Court.

5. On 5.2.2015, the executing Court held that there is no provision for deduction of TDS in an award amount, hence, the prayer made in this behalf by the petitioner was dismissed and as directed the petitioner has deposited the deducted TDS amount of Rs.50,503/- through Cheque on 25.2.2015 and thereafter further deposited interest amount on the TDS deducted i.e. Rs.5,213/- on 4.3.2015.

6. The petitioner has preferred the instant Writ Petition (227) and prayed that this Court by allowing the petition issue a writ of mandamus as the order dated 5.2.2015 is illegal and without authority of law.

7. Learned counsel further submitted that as per order passed by this Court in Writ Petition (227) No.205 of 2010 (The New India Assurance Company Limited Vs. Ramesh Kumar Tamrakar & Ors.) vide order dated 16.12.2010, this Court held that the Court below was not justified in directing the Insurance Company to deposit the amount of TDS. On behalf of the petitioner further reliance is placed on **2004 ACJ 1996 (United India Insurance Co.Ltd. vs. Mitaben Dharmeshbhai and others)** wherein the Gujrat High Court held that the petitioner is under obligation to comply with the provisions contained in Section 194-A (3) (ix) of the Income Tax Act, 1961 and it is necessary to deduct the TDS in accordance with the said provisions failing which the petitioner would be held liable for the consequences under the Income Tax Act, 1961. Learned counsel further submits that as they have complied the provisions of Income Tax Act which is a mandatory provision, hence, the impugned order dated 5.2.2015 be set aside and the amount so deposited by the petitioner before the executing Court already deducted towards TDS Rs.50,503/- and interest i.e. Rs.5,213/- be refunded to the petitioner. There is no any return or reply on behalf of the contesting respondents though served as per office note.

8. For the purposes of appreciation regarding arguments advanced in this behalf record perused.

9. After perusal of the impugned order sheet dated 5.2.2015, it is apparent that the court below dismissed the application made in this behalf by the petitioner and held that there is no provision to deduct the

TDS on award amount. Para 6 of the order dated 16.12.2010 in Writ Petition (227) No.205 of 2010 (The New India Assurance Company Limited Vs. Ramesh Kumar Tamrakar & Ors.) reads as under :

> " (6) To appreciate the rival submission the provision contained in Section 194-A of the Income Tax Act needs reference. Section 194-A has been inserted in the Income Tax Act, 1961 by Finance (No.2) Act, 1967 with effect from 01/04/1967. 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 :-
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> > "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 credited 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.
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> (8) The High Court of Gujrat in the matter of United India Insurance Co. Ltd. Vs. Mitaben Dharmeshbhai and others (supra) and the High Court of M.P. In the matter of United India Insurance Co. Ltd. vs. Janki Devi and others, 2009 ACJ

1937 has taken a similar view and this Court fully agrees with the view taken by the Gujrat and M.P. High Courts on this issue".

10. On a minute examination, it is clear that it is required by the petitioner to comply with the mandatory provisions of the Income Tax Act to deduct TDS in accordance with the said provisions failing which the petitioner would be held liable for the Sections under the Income Tax Act, 1961. By deducting the TDS as required under the law the petitioner has not committed any illegality or impropriety.

11. On the other hand, without considering the mandatory provisions of Income Tax Act, the order passed by the Court below dated 5.2.2015 is illegal and improper. Consequently, it requires interference.

12. On due consideration, the instant writ petition is hereby allowed. The order passed by the executing Court on 5.2.2015 is set aside. The Court below is directed to return the amount so deposited as TDS Rs.50,503/- and the interest thereof Rs.5,213/- to the petitioner immediately.

13. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE

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