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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.222 of 2017

- The Oriental Insurance Company Limited, Divisional Office, Geetanjali Bhawan, Old Bus Stand, Korba, District Korba (CG).

---- Petitioner

Versus

1. Geeta Bai, W/o Shri Ramlal, aged about 50 years.
2. Ramlal, S/o Shri Kartik Ram, aged about 52 years.
3. Ku. Rajnandini, D/o Ramlal, aged about 10 years, (Minor) through natural guardian mother the respondent No.1.

   All by caste Sidar (Gond), R/o Village Domanara, Police Station and Tahsil Kharsiya, District Raigarh (CG).
4. Shanker Agrawal, S/o Shri Rohtas Agrawal, R/o Village Hirilipali, Ata Bora, District Bargarh (Orissa).
5. Raghuveer Das, S/o Shri Chintamani, aged about 35 years, R/o Nearby Baba Transport, Gandhi Bagh, Nagpur, P.O. Gandhi Bagh, District Nagpur (Maharashtra).

---Respondents

For Petitioners : Mr. Raj Awasthi, Advocate
For Respondent : Mr. Ravi Maheshwari, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

03/07/2017

(1) Impugning the legality,validity and correctness of the order dated 20.09.2016 passed by Motor Accident Claims Tribunal, Janjgir-Champa, in Execution Case No.48/2010, the 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 claimants/respondents No.1 to 3 herein, the claims tribunal passed an award of Rs.3,32,000/- along with 6% interest in favour of claimants/respondents on 18.06.2015 and thereafter in compliance of the award the petitioner company deposited the award amount inclusive of interest, however, the petitioner Insurance Company deducted an amount of Rs.12,400/- as tax deducted at source under the provisions contained in Section 194-A of the Income Tax Act, 1961 (hereinafter referred to as '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.

(4) 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 to 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.

(5) I have heard the learned counsel for the petitioner and perused the record with utmost circumspection.

(6) 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 Accident Claims Tribunal. The said clause has been inserted with effect from 1st June, 2003 by the Finance, 2003."

(7) 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."

(8) Turning 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 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.

(9) In the matter of **The New India Insurance Company Limited vs. Ramesh Kumar Tamrakar and others,** 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 01.06.2003, the Insurance Company is duty bound to deduct T.D.S. from the amount of interest paid by it.

(10) 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 20.09.2016 deserves to be and is accordingly set-aside and it is held that the petitioner Company is absolutely justified in deducting tax at source while make the payment of the award inclusive of the interest.

(11) In consequence of the aforesaid discussion, the writ petition deserves to and is accordingly allowed and the impugned order dated 20.09.2016 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

L/-