

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CIVIL REVISION PETITION NO.1018 OF 2014

Between:

Kolluri Nasaramma and others .. Petitioners

And

M.Anjaneyulu and others .. Respondents

DATE OF ORDER PRONOUNCED: 15.11.2018

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE D. V. V. S. SOMAYAJULU

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- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
 - 2 Whether the copies of judgment may be marked to Law Reports/ Journals Yes/ No
 - 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No

* THE HONOURABLE SRI JUSTICE D. V. V. S. SOMAYAJULU
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Counsel for the Petitioners : Sri N.Madhava Rao

Counsel for the respondents : Sri V.Srinivasa Rao

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? CITATIONS:



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.1018 OF 2014

ORDER:-

This revision petition is filed questioning the order, dated 24-12-2013 passed in E.P.No.45 of 2013 in MOVOP No.290 of 2010 by the I Additional District Judge, Ongole.

2. The order arises out of a case relating to a deduction made towards income tax by the Insurance Company while complying with the judgment and decree of the court below.

3. The petitioners-decree holders filed MVOP No.290 of 2010. The said OP was decreed, but the 2nd JDR which is a Insurance Company did not deposit the entire amount. There was a shortfall of Rs.18,471/-. Therefore, the application was filed under Order XXI, Rule 46 CPC claiming appropriate reliefs. In reply thereto, the Insurance Company-2nd JDR filed counter stating that there is a compliance with the order of the court. In addition, they state that as per the statute, they are bound to deduct the income tax at source. Therefore, they have deducted the said sum and paid the balance amount to the court. Hence their contention is that there is no shortage.

4. The matter was heard by the lower court and the lower court came to a conclusion that the deduction is

correct and that the 2nd JDR is bound by the statute to deduct the income tax at source. Questioning the said order, the present revision petition is filed.

5. Heard Sri N.Madhava Rao, learned counsel for the petitioners and Sri V.Srinivasa Rao, learned Standing Counsel for the 2nd respondent-Insurance Company.

6. The essential ground that is urged by the learned counsel for the revision petitioners is that the deduction of the tax at source is totally contrary to Sub-section 9 of Section 194 of the Income Tax Act. Sub-section (3) and (ix) of Section 194 of the Income Tax Act are to the following effect:-

“Sub-Section ‘3’: states that the provisions of Sub-section(1) shall not apply.....

(ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.”

(Emphasis supplied)

It is the contention of the learned counsel for the petitioners is that unless the amount of income credited or paid during one financial year exceeds Rs.50,000/-, there is

no need or necessity to deduct the income tax. The learned counsel argued that the interest accrued for 27 months and 19 days for the share of the first petitioner and that the total interest that is accrued in this manner is Rs.69,717/-. The learned counsel submits that per financial year, the interest that is payable is only Rs.30,330/-. The contention of the learned counsel is that this amount is far below the limit fixed by the Act. Therefore, he questions the deduction and the impugned order.

7. In reply thereto, the learned counsel for the respondents argues that the total income that is accrued to the petitioners' share is Rs.69,717/- which is above the limit of Rs.50,000/- that is specified by Sub-section 9 of Section 194 of the Income Tax Act. It is also submitted that if the income exceeds Rs.50,000/- in the year of the disbursement, tax is payable.

8. In addition, the learned counsel also argued while relying upon a judgment of Himachal Pradesh High Court in CWPIIL No.9 of 2014 that income generated or paid as compensation cannot be treated as income. This is the order pronounced by the Division Bench of Himachal Pradesh High Court. Their lordships held that such accrual cannot be treated as a income at all. The learned counsel for the respondents submits that the judgment of the Himachal Pradesh High Court does not consider the express

language of Sub-section 9 of Section 194 of the Income Tax Act. Therefore, it is the contention of the learned counsel for the respondents that this judgment does not apply at all. He also points out that this ground is not raised in the grounds seeking revision.

9. This court, after hearing both the learned counsel, is of the opinion that a plain language interpretation of Sub-section 9 of Section 194 of the Income Tax Act clearly states that if the aggregate amount of income exceeds Rs.50,000/- in a one financial year the tax is to be deducted at source. Otherwise no tax can be deducted. In the case on hand, the interest accrued is Rs.69,717/- which is the interest that was awarded from the date of application to the date of judgment and decree. Therefore, it is clearly not the income that is paid in one financial year, but is actually income pertaining to more than one financial year. Therefore, the share of the petitioners for one financial year comes to Rs.30,330/-. The learned counsel for the petitioners has also filed a memo giving the details of the calculations, which was served on the other side also.

10. In view of the clear and categorical language used in Sub-section 9 of Section 194 of the Income Tax Act, this court is of the opinion that the deduction of tax at source in this particular case is totally incorrect and unwarranted. A

similar finding was already rendered by this court in C.R.P.No.760 of 2008 in June 2018.

11. The next question that arises for consideration is how is the amount to be realized?. The learned counsel for the respondents relying upon a judgment of a learned single judge of this court passed in C.R.P.No.81 of 2009, argued that respondent-Insurance Company was only discharging its statutory duty and, therefore, even if the amount is wrongly deducted and remitted, the remedy of the claimants/deGREE holders lies before the Income Tax Assessing Authority, but not before the executing court.

12. This court, after hearing the submissions, is of the opinion that this stand is not correct in the facts and circumstances of the case. The Insurance Company has a team of Officers to handle its cases. They have the wherewithal and the capacity to seek the refund. If they make a mistake and deduct a certain amount based on their interpretation of Sub-section 9 of Section 194 of the Income Tax Act, the petitioners before this court cannot be penalized. It is also not clear where the deducted amount is actually lying. The petitioners in this case are the wife and two minor children who have claimed the compensation for the death of the first petitioner's husband and of the father of the 2nd and 3rd petitioners. They are all residents of a

small village in Prakasham District and are from the poorer strata of society. To expect the people from this remote corner of the State to go and make an application in the Income Tax Department to seek a refund would amount to putting a premium on the default of the 2nd respondent. Therefore, this court is of the opinion that the petitioners cannot be asked to approach the Income Tax Department and seek a refund. The petitioners have a decree in their favour and that decree is to be complied with. Therefore, the 2nd respondent is directed to deposit the balance amount i.e., the amount deducted towards tax to the credit of the suit. On such deposit being made, the petitioners 1 to 3 are at liberty to withdraw the same without furnishing any security. The tax deducted and supposedly remitted earlier will have to get back by the respondents alone. The petitioners cannot be saddled with this responsibility.

Accordingly, the Civil Revision Petition is allowed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

15-11-2018
TSNR