THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.2766 of 2012

ORDER:

Heard the learned Standing Counsel for the revision petitioner – Regional Manager, M/s. Oriental Insurance Company Limited.

2. The revision petitioner, who is the judgment debtor in E.P.No.234 of 2011 in M.V.O.P.No.237 of 1995 on the file of the Principal District Judge, Medak at Sanga Reddy, questioned the order dated 14.05.2012 in the said E.P., whereby and whereunder, the learned District Judge, referring to the ruling of this Court in **Rana Pratap Singh & others v. Land Acquisition Officer – R.D.O., Hyderabad East Division and others**[1], wherein this Court held that the interest accumulated on the compensation is not subject to income tax and it does not empower the officer concerned to make deduction at source, held that the deduction towards TDS cannot be made by the judgment debtor and consequently directed the judgment debtor to deposit the same in the Court.

3. Learned Standing Counsel for the petitioner relies on a decision of a learned Single Judge of this Court in CRP.No.4809 of 2009 (**The New India Assurance Company Limited, Srikakulam v. Savara Paramma and three others**) rendered on 22.02.2010 In an alike situation, the learned Single Judge held that such an order suffers from a patent error of law and it is without jurisdiction and necessitates being set aside and thereby set aside the order passed in E.P.No.24 of 2007 in

[1] 1998 (5) ALT 197

O.P.No.507 of 2004 on the file of the District Judge & Motor Accidents Claims Tribunal, Srikakulam, dated 13.02.2008, giving liberty to the claimants to approach the Income Tax authorities and make a claim for spread over of the interest and, in case there is no income tax liability, to claim refund. Thus, the facts therein would show that TDS amount deducted from the respondents – claimants was paid to the Income Tax Department by the insurer and the Tribunal has ordered the insurer to deposit that portion of the amount also and the contention raised on behalf of the insurer was that the insurer has been mulcted with liability with regard to TDS amount twice i.e., payment of the said amount both to the Income Tax Department and to the respondents – claimants.

4. Learned Standing Counsel also relies on yet another decision rendered by a learned Single Judge of this Court in **Oriental Insurance Co. Ltd., Secunderabad v. G.S. Diwakar and others**[2], wherein it was held that the insurer should not have deducted and remitted TDS on total interest amount of all J.Drs. put together, but should have divided interest relating to each of the D.Hrs. and should have remitted TDS only in respect of interest payable to that J.Dr. whose amount exceeded Rs.50,000/- and, referring to the submission made that there is no provision under the Income Tax Act, 1961, to claim refund by the garnishee who remitted the amount as TDS amount in case the garnishee had wrongly remitted the said amount, held that remedy of the respondents – claimants lies before the Income Tax Assessing Authority

[2] 2013 (6) ALD 226

and not before the executing Court and the lower Court in the circumstances committed error in directing the insurance company to remit TDS amount once again into Court and erred in entrusting warrant of attachment for the said amount to the bailiff for execution against the revision petitioner company.

5. Learned counsel for the revision petitioner also referred to the ruling in **Bikram Singh v. Land Acquisition Collector**[3] which was referred to and relied on by the learned trial Court on the basis of which the order under challenge was passed. In fact, the ratio laid down in **Bikram Singh** (3 supra) relates to the acquisition of proceedings and payment of compensation and interest on delayed payment of interest on compensation and the Hon'ble Apex Court while holding that it is a revenue receipt which is exigible to tax under Section 4 of the Income Tax Act and Section 194-A of the Income Tax Act has no application at all for the purpose of that case as it encompasses deduction of the income at the source and observed that the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year.

6. In such an event, certainly, the Court below appears to be not right in passing the order directing the Insurer to deposit the amount that was deducted towards T.D.S. Further, the ratio applied by the

[3] (1997) 10 SCC 243

learned Single Judge of this Court in **G.S. Diwakar** (2 supra) would aptly apply to the present fact-situation. Hence, it is observed that the remedy of the respondents-claimants lies before the Income Tax Assessing Authority and not before the Executing Court, and that the Court below, hence committed an error in deducting T.D.S. amount once gain.

7. Accordingly, the present Civil Revision Petition is allowed setting aside the order passed by the Court below. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

02.04.2018
v v / gbs