

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR No.6784 of 2016 (O&M)
Date of decision : April 04, 2018

The New India Assurance Co. Ltd. Petitioner

Versus

Savitri Devi and another Respondents

2. CR No.4658 of 2017 (O&M)
Date of decision : April , 2018

The New India Assurance Co. Ltd. Petitioner

Versus

Gagandeep and others Respondents

3. CR No.2606 of 2017 (O&M)
Date of decision : April , 2018

The New India Assurance Co. Ltd. Petitioner

Versus

Hira Lal (now deceased) through LRs and others Respondents

4. CR No.2607 of 2017 (O&M)
Date of decision : April , 2018

The New India Assurance Co. Ltd. Petitioner

Versus

Prema Devi and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vinod Gupta, Advocate for the petitioner
in all the cases.

Mr. Aman Kashyap, Advocate
for respondent No.1 in CR No.2606 of 2017 and
for respondent Nos.1 to 4 in CR No.2607 of 2017.

Mr. Yogesh Putney, Amicus Curiae.

Mr. Asbhishek Singla, Advocate for the respondents
in CR No.6784 of 2016.

Mr. Rohit Kumar, Advocate for respondent No.1 and
Mr. Nitish Garg, Advocate for respondent Nos.2 and 3
in CR No.4658 of 2017.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J. (ORAL)

Impugned in the present revision petitions are the different orders passed by Motor Accident Claims Tribunal, Bathinda, whereby the J.D.-Insurance Company was directed to deposit within 15 days the TDS amount, which has been deducted at source. The J.D. was given liberty to withdraw the TDS amount from Income Tax Department.

I have heard learned counsel for the parties and also examined the matter with the valuable assistance rendered by Mr. Yogesh Putney, Amicus Curiae, appointed by this Court and the learned counsel for the parties.

The point for determination before this Court is

“whether Insurance Company can deduct income tax at source (TDS) on the interest paid on the compensation paid under Motor Vehicles Act, 1988?”

The learned Amicus Curiae has argued that in view of the amendment carried out w.e.f. 01.04.2010, in Section 194-A and Section 56

(2)(viii) of the Income Tax Act, 1961 (for short 'the Act'), which empowers the deduction of TDS on the interest to be deducted in the year of receipt read with provisions of Section 194(A)(ixa) of the Act, the income tax on the interest to the extent of ₹50,000/- is exempted, whereas beyond that it is to be deducted at source.

Learned counsel for the respondent(s) has argued that at the first instance, the tax on the interest is payable in the year in which it was credited and payable and secondly, TDS on interest part is not payable.

Learned counsel for the respondent(s) has relied upon the Single Bench judgment of this Court delivered in case of ***“New India Assurance Company Ltd. vs Sudesh Chawla and others”***, 2016(1) PLR 505.

A perusal of the said authority shows that in the said case, circular dated 14.10.2011, issued by the Income Tax Authorities, was quashed. However, Section 56(2)(viii) and Section 194 (ixa) of the Act were not discussed and decided.

Moreover, the said judgment though specifically lay down that the compensation is not the income but it does not say in so many words that the interest on the compensation is also not income.

Learned counsel for the respondent(s) has referred to the definition of 'income' as laid down under Section 2(24) of the Act, wherein the compensation or interest on the compensation is not laid down as income.

Section 2(28A) of the Act defines the interest as under:

*“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 utilised;”

Under Section 4 of the Act, the income tax is to be deducted at source.

Under Section 56(2)(viii) of the Act, the income by way of interest received on the compensation or enhanced compensation referred to Clause (b) of Section 145A of the Act is to be treated as income from other sources.

Section 145 A(b) of the Act provides that the interest received by an assessee on the compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.

As per Section 190 of the Act, the tax on the income is to be deducted for collection at source.

Section 194A of the Act provides as under:

Interest other than “Interest on securities”

“(1) Any 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 [by way of interest on securities], shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:”

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As per sub Section 3, the provisions of sub-section (i) shall not apply.

(i) ----- (ix)

Section 194 (ixa)

“ to such income 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 paid during the financial year does not exceed fifty thousand rupees;”

It is contended on behalf of the Insurance Company that the combined reading of abovenoted provisions goes to shows that at the first instance, the tax on the interest of compensation is to be deducted at source in the financial year, in which it is received.

Secondly, in a case pertaining to interest on the compensation awarded by the Motor Accident Claims Tribunal, no tax is payable on the interest up to ₹50,000/- and beyond ₹50,000/- the tax is to be deducted source on the aggregate of the amount of such income paid during the financial year.

Learned counsel counsel for the respondent(s) has also referred to the judgment of Madras High Court delivered in case of ***“The Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Bharathipuram, Dharmapuri -05 vs Chinnadurai”, 2016 AIR (Madras) 146,*** and has referred to para No.8 of the said judgment to show that the provisions of Sections 194-A and 156 of the Act were considered in the said judgment, which is reproduced as under:

8. *Mr.Venkatachalam, learned counsel for the*

Petitioner would submit that as per Sections 194-A and 156 of the Income Tax Act, 1961, the interest portion awarded by the Motor Accident Claims Tribunal should be subject to TDS and accordingly stated that the deduction was justified and to canvass his case, he relied upon two judgments of different High Courts and a judgment of this Court.”

Reference is also made to the following observations:

12. But, this Court does not choose to do the same, since the issue at hand is of larger public interest and have far reaching implications. As stated earlier, if the law has to be interpreted so technically and rigidly whereby which a family of an individual who could have possibly lost his life or limbs in an accident has to pay TDS on the interest that has accrued on the compensation amount, will the law be doing a service or disservice to the victims?. With all due respect, I find that the three decisions cited by the Petitioner does not deal with this issue at all.

13. The question is whether the provisions of the Income Tax Act 1961, and more specifically, whether the compensation awarded by the Motor Accident Claims Tribunal to the victim can be classified as a taxable income under the Income Tax law?. The answer to this question in the opinion of this Court is in the negative. Compensation cannot be categorized or even described as income as it has already been stated that the intention of the legislature in awarding compensation to the victims of Motor Accident cases is to restitute them and rehabilitate them.

17. If there is a conflict between a social welfare

legislation and a taxation legislation, then, this Court is of the view that a social welfare legislation should prevail since it subserves larger public interest. The Motor Vehicle Act is one such legislation which has been passed with a benevolent intention for compensating the accident victims who have suffered bodily disablement or loss of life and the Income Tax Act which is primarily intended for Tax collection by the State cannot put spokes in the effective and efficacious enforcement of the Motor Vehicles Act. In fact, if one might deeply analyse, it could be seen that there is no direct conflict between any provisions of the Income Tax Act and the Motor Vehicles Act and it is only by the interpretation of the provisions the concept of compulsory payment of TDS has crept into the realm of compensation payment in Motor Vehicle Accident cases.

18. Hence, with due respect I am unable to concur with the findings of the Karnataka High Court, the Chattisgarh High Court and this Court cited by the Revision Petitioner. This Court is of the view that the Division Bench judgment of the Himachal Pradesh high Court and the judgment of the Single Judge of the Punjab and Haryana High Court lay down the right law and hence, this Court arrives at the conclusion that the compensation awarded or the interest accruing therein from the compensation that has been awarded by the Motor Accident Claims Tribunal cannot be subjected to TDS and the same cannot be insisted to be paid to the Tax Authorities since the compensation and the interest awarded therein does not fall under the term 'income' as defined under the Income Tax Act, 1961.”

It has been impressed that since the compensation is not the part of the income and so is the interest on the compensation. Therefore, no TDS is liable to be deducted on the interest accruing on the compensation and consequently, the Insurance Company is not justified in deducting the tax at source.

It is observed that usually when a person makes a motor accident claim before the Insurance Company, ordinarily, it does not happen that the Insurance Company readily admits the claim and pays the compensation. Usually, the victim has to move the Tribunal and many times, it takes years and some time decades either before the Tribunal or before the higher Court to finally determine the compensation payable to him. For the delayed payment of compensation, the victim is not liable. Therefore, when the compensation is actually paid, interest on compensation on account of delay in payment is also payable. There can be two scenarios. One is when interest is paid as a part of the compensation and the second is when the victim receives the compensation along with interest and deposit the same in the bank and thereafter, he receives interest thereon.

Admittedly, in the second scenario, the interest on such compensation, if otherwise liable for deduction is to be deducted at source, if it exceeds the limit of ₹50,000/-, as per Section 194(ixa) of the Act.

However, when initial compensation is paid after a prolonged litigation to the victim along with interest, the question would arise “whether the same is part of compensation or is to be treated as a separate component, so as to be liable for TDS?”

I am of the view that the view taken by the Division Bench of Himachal Pradesh High Court in case of ***“Court on its Motion vs. H.P. State Co-operative Bank Ltd., 2014 SCC Online HPS 4273***, Single Bench of this Court in ***“Sudesh Chawla's case (supra)***, and by the Madras High Court in ***Chinnadurai's case (supra)***, lay down the correct law.

It is observed when there is conflict between the Social Welfare Legislation and Taxation Legislation, then the Social Welfare Legislation should prevail, since, it sub-serves larger public interest.

Admittedly, Motor Vehicles Act, 1988, is a Social Welfare Legislation. In case of victims, they have already been subjected to the rigors of law by taking rounds of the Courts for year or some time decades to get the compensation for the loss they have already suffered. Therefore, in my view, interest paid on account of delayed payment of compensation cannot be subjected to TDS as discussed above.

Considering the object of the Motor Vehicles Act, 1988, regarding grant of compensation to the victim, it will not only be unjust but cruel to ask the hapless victim to first pay the interest received along with compensation on account of delayed payment, for which he is not responsible, and then to file the income tax return and claim the refund.

As a result of the foregoing discussion, it is held that the interest paid along with the compensation as a result of the order of the Tribunal or of the superior Court is not liable for TDS.

Consequently, the impugned orders passed by the Tribunal, directing that the compensation awarded by the Tribunal or interest accruing thereon cannot be subjected to TDS, is upheld.

Thus, all the aforesaid revision petitions stand dismissed. Since, the main revision petitions have been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

April 04, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes