$~13 to16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 8th December, 2021

\+ **C.R.P. 252/2019 & CM APPL. 48346/2019**

KAILASH CHAND GUPTA (HUF) ..... Petitioner
Through: Mr. Abhishek Gupta, Advocate. (M:9871032872)

versus

M/S TELU RAM AMAR CHAND & CO ..... Respondent
Through: None.

14 WITH

\+ **C.R.P. 255/2019 & CM APPL. 49094/2019**

SURESH KUMAR ..... Petitioner
Through: Mr. Abhishek Gupta, Advocate.

versus

M/S TELU RAM AMAR CHAND & CO ..... Respondent
Through: None.

15 WITH

\+ **C.R.P. 258/2019 & CM APPL. 49209/2019**

ASHA SINGHAL (DECEASED) THR LRS ..... Petitioners
Through: Mr. Abhishek Gupta, Advocate.

versus

M/S TELU RAM AMAR CHAND & CO ..... Respondent
Through: None.

16 AND

\+ **C.R.P. 259/2019 & CM APPL. 49244/2019**

AMREESH SINGHAL (HUF) ..... Petitioner
Through: Mr. Abhishek Gupta, Advocate.

versus

M/S TELU RAM AMAR CHAND & CO ..... Respondent
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. None has appeared for the Respondent in these matters for the last few hearings, despite being served and also being repeatedly intimated by the Registry. Vide order dated 24th February, 2021, it was recorded that notice has been accepted by Mr. Kadian, ld. Counsel appearing on behalf of the Respondent, and three weeks' time was sought for filing the reply. However, none appears for the Respondent today as well. Accordingly, this Court proceeds in the matter.

3. These petitions have been filed challenging the order dated 14th October, 2019 passed by the Ld. District & Sessions Judge (HQs), Central District, Tis Hazari Courts, Delhi (*hereinafter referred as "Trial Court"*) by which the applications under Order XII Rule 6 CPC filed by the Petitioners/Plaintiffs (*hereinafter referred as "Plaintiffs"*) have been dismissed by the Trial Court. The Plaintiffs had instituted the suits being ***CS Nos.1661/2018***, ***1663/2018***, ***1662/2018*** and ***1664/2018*** for recovery of sums of Rs. 7,56,250/-, Rs.12,60,416/-, Rs.10,08,333 and Rs.12,60,416/- respectively, in each of these petitions.

4. The case of the Plaintiffs was that the Respondent/Defendant (*hereinafter referred as "Defendant"*) had borrowed Rs.6 lakhs, Rs.10 lakhs, Rs.8 lakhs and Rs.10 lakhs respectively, from each of the Plaintiffs. The said amounts were advanced at the rate of 12.5% interest per annum for a period of three years. These transactions were in the nature of a loan. In

fact, account payee cheques in respect of the interest amount payable for the first two years, after deducting necessary TDS were also issued by the Defendant. However, since the loan amounts were not repaid, the Plaintiffs filed the suits seeking decree of the amount along with *pendente lite* and future interest.

5. In the written statement, the Defendant did not deny the factum of the amount having been advanced by the Plaintiffs. However, the case of the Defendant was that the same was advanced in the form of investments for a share in profits. Thus, the transactions were not in the nature of loan. Since the same were in the form of investments, the Defendant suffered huge losses. Thus, the Defendant's case was that the Plaintiffs were also liable to suffer the same losses, and the amounts advanced were not repayable loan amounts.

6. Before the Trial Court, an application under Order VII Rule 11 CPC was filed by the Defendant, which was dismissed, vide Trial Court's order dated 15th April, 2019. The Trial Court directed the personal appearance of the proprietor of Sh. Amar Chand Gupta, the Defendant firm as also that of the Chartered Accountant of the Defendant firm. Statements of the proprietor of the Defendant firm as also its Chartered Accountant were recorded. The latter produced TDS returns and TDS Certificates, and stated that the nature of payment on which TDS was deducted to be the payment of interest on the amount advanced.

7. The said statements of the proprietor of the Defendant firm, as also that of the Chartered Accountant are relied upon by the Plaintiffs to the effect that the Chartered Accountant admitted that the payment of interest on the amounts advanced. The same indicated that the TDS was deducted under

Section 194A of the Income Tax Act, 1961. This, according to the Plaintiffs, constitutes a clear admission by the Defendant. Thus, on the strength of these statements, the Plaintiffs filed an application under Order XII Rule 6 CPC seeking a judgment on admissions, and consequently, decree of the suits.

8. After considering the facts and circumstances of the case, the Trial Court, dismissed the Plaintiffs' application under Order XII Rule 6 CPC. Reliance was placed upon the judgment of the Supreme Court in ***M/s. Kapil Corepacks Pvt. Ltd. v. Shri Harbans Lal, [Civil Appeal arising out of SLP (C) 19894/2009, decided n 3rd August, 2020]*** to the effect that the statements recorded under Order X Rule 1 and 2 CPC can only be used to elucidate the matter in controversy in the suit, and cannot be considered to record evidence or to secure admissions.

9. Hence, the short question in these petitions is as to the effect of the statements made under Order X Rule 1 and 2 CPC as also the effect of the TDS Certificates produced by the Defendant before the Trial Court.

10. Mr. Gupta, ld. Counsel for the Plaintiff has relied upon the judgment in ***Uma Shankar Sharma & Ors. v. Rajesh Sharma & Ors. [CS (OS) 1442/2011 decided on 27th May, 2015]*** to argue that statements under Order X CPC have to be recorded on oath. He further submits that the judgment in ***M/s. Kapil Corepacks Pvt. Ltd. (supra)*** has been misinterpreted by the Trial Court.

11. This Court is of the opinion that a statement under Order X CPC when recorded, has to be read in the context of Order X Rule 1 CPC and Order X Rule 2 CPC. If there are any allegations of facts, which are either admitted or denied, there has to be an oral examination of the parties or any

person, to elucidate the matter in controversy in the suit.

12. In the present case, the Chartered Accountant of the Defendant firm has stated in his statement that Section 194A of the Income Tax Act, 1961 relates to the payment of interest. This, in any event, is a provision of law, which can be clearly deciphered from a perusal of the said provision itself. The effect of a TDS Certificate being issued, and whether the same can be construed as an admission or not is a question that would arise in this case. The Statement of the Chartered Accountant of the Defendant firm, who stated that TDS was deducted, and deposited for the payment of interest also has to be considered. The relevant extract of the said Statement of the Chartered Accountant reads as under:

> "***Statement of Sh Deepak Bansal S/o Late Sh S.K.Bansal, Chartered Accountant,*** *201/8, Sushma Tower, Central Market, D Block, Prashant Vihar, New Delhi- 110 0850*
>
> *On S.A.*
>
> *I have received the summons of this court for today. I was the TDS consultant for the defendant firm for the years 2014-15 and 2015-16. I had filed the TDS returns as a TDS consultant on the basis of data provided to me by M/s Telu Ram Amar Chand & Co. for the financial year 2014-15*
> *and 2015-16. I have brought the photocopies of TDS returns and TDS certificate which are mark X & Y as per my records based on what I have filed. I have verified the mark A & B from the above documents brought by me. The nature of the payment, from which the TDS was deducted and deposited vide TDS certificate mark X & Y was payment of interest.*
>
> *XXXXX by Sh N.K. Kadiyan, Ld. Counsel for the*

> *defendant*
>
> *M/s Telu Ram Amar Chand & Co. was a sole Proprietorship of Mr. Amar Chand Gupta. Section 194 A Income Tax Act is applicable on interest, except interest on securities. It is wrong to suggest that provisions of Section 194 A of Income Tax Act are applicable only to the companies or organizations registered with Reserve Bank of India. Vol. The provisions of Section 194 A of Income Tax Act are applicable to all the assesses who had been assessed to Income Tax in the previous financial year and their accounts were audited in the previous year and were paid the interest in the current year. It is wrong to suggest that I had deposited the TDS under the wrong provisions. Vol. I had deposited the TDS on the basis of information supplied by the client regarding the nature of payment. It is wrong to suggest that documents placed on record by me are not the true documents."*

13. In response to a query by the Court as to the stage of the suit as on date, the Ld. Counsel for the Plaintiffs, fairly and candidly admits that the suit is at the stage of final arguments, and the recording of evidence is complete in the matter.

14. Considering that the evidence has already been recorded and the pleadings of the parties have been completed before the Trial Court, one of the issues that the Trial Court would now have to examine is the effect of the TDS Certificates in the context of the Statement of the Chartered Account of the Defendant firm. Further, the Trial Court has to consider the short issue as to whether the amount advanced by the Plaintiffs was in the nature of investments or loan.

15. At the stage of final adjudication, the Trial Court shall bear in mind

the statements made under Order X CPC read along with the pleadings of the parties. If the case of the Defendant, that the amount was advanced as a means of investment and not as a loan, is not made out, the Trial Court would proceed further, in accordance with law, on the basis of the evidence adduced by the Plaintiffs and the statements recorded under Order X CPC.

16. With these observations, these petitions, along with all pending applications, are disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 8, 2021/*dk/Ad*