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C.O. 105 of 2022
(Via Video Conference)

The New India Assurance Co. Ltd.
-Vs-
Tapan Kumar Mondal & Anr.

Mr. Rajdeep Bhattacharya,
... for the petitioner

The present application under Article 227 of the Constitution of India is at the instance of the New India Insurance Company Limited being aggrieved by order dated 20.12.2021 passed by the Learned Judge VIII Bench City Civil Court at Calcutta in MAC Execution No.19/2019 whereby the Learned Court below directed the Insurance company to pay awarded compensation of Rs.6,50,000./- along with interest accrued thereon @ 6% per annum from the date of filing of the application till 28.11.2018 within 15 days from the date and has prevented the Insurance Company from deducting any kind of charges from the awarded compensation including accrued interest.

Only question that requires determination in the present case is whether compensation awarded by

Motor Accident Claims Tribunal and interest thereon is taxable and can Insurance Company deduct TDS?

Learned advocate appearing for the Insurance Company draws attention of this Court to Section 194 A (ixa) of Income Tax Act, which provides Income Tax is chargeable to such income credited 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 Rs. 50,000/-. Thereby he submits the opposite parties no.1 & 2 who are entitled to get interest on compensation of Rs.6,50,000./- @ 6% per annum from the date of filing of the application till 28.11.2018 and which would be beyond ceiling limit of Rs.50,000/- is subject to income tax and as such the Insurance Co. in view of such provision of Income Tax Act, 1961 introduced in the Act by way of amendment and giving effect from 1st June, 2015 is bound to deduct Income Tax on the accrued interest exceeding Rs. 50,000/- and thereafter make payment to the claimants. The impugned order being in violations of such provisions of law is liable to set aside.

Different High Courts appear to have taken divergent views whether interest payable on compensation is subject to tax or not.

Section 194A (ixa) is introduced by way of amendment in Income Tax Act, 1961 with effect from 1st June 2015 bringing interest payable on compensation exceeding Rs. 50,000/- during the financial year taxable. So, this court is of view if such provision is not given effect then introduction of such provision in Income Tax Act Act 1961 with effect from 01.06.2015 would be meaningless and nugatory.

Some High Courts are of view that Motor Vehicles Act is a social welfare legislation and if there is conflict between social welfare legislation and a tax legislation, in that case the social legislation will prevail, since it sub-serves larger public interest. A person who suffers also cannot be asked to part with solatium he receives since it is the only remedy he has been provided with by law. The Motor Vehicles Act is one such legislation which has been passed with a benevolent intention for compensating the accidents 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. The interest awarded on compensation under Motor Vehicles Act does not fall within the definition of Income. The Insurance Company cannot deduct tax at source on interest payable on compensation.

However, in Gouri Deepak Patel & Ors vs New India Assurance Co. Ltd., the Division Bench Of Bombay High Court has accepted the interpretation of Section 194A of Income Tax as made in Smt. Hansagauri Prafulcandra Ladhani vs. Oriential Insurance Co. Ltd. Reported in 2007 ACJ 1897 (Gujarat) and where it was held:-" the interest on the compensation awarded by the Tribunal or enhanced compensation awarded by the appellate court cannot be taken to have accrued on the date of award of Tribunal granting compensation or from the date of the award of the appellate court granting enhanced compensation, but has to be taken as having accrued year after year from the date of filing of the claim petition till the date of deposit by the insurance company."

Therefore, this court is of view that procedure laid down in Hansaguri (supra) and followed in Gouri Deepak Patel (supra) is required to follow by the Insurance Company while depositing the amount of compensation Awarded by a Tribunal and which include interest amount in following manner:-

(a) first spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit,

(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of section 193-A (3) to (ix) of the Income Tax Act,1961. Such amount shall not, however, straightway be paid over to IncomeTax Department,

(c) produce before the Claims Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of cliam application till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

The Tribunal who passed the award is required to follow the following Procedure:-

(I) The Tribunal shall ensure that the amount of interest accrued each year is apportioned amongst claims on year to year basis.

(II) if the interest payable to any claimant during any particular financial year exceeds Rs.50,000/-, Claims Tribunals shall permit the insurance companies/owners to pay over the amount liable to be deducted at source u/s 194-A(3) (ix) to the Income Tax Department in respect of that particular year, without prejudice to the claimant's case that he is not liable to pay any income tax for that year.

(III) For the financial year(s) for which the interest payable to the concerned claimant does not exceed Rs.50,000/-, that Tribunal may permit such claimant to withdraw the amount deposited as per direction (i) (b) without producing certificate from the concerned income tax authority that there is no income tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(IV) it is clarified that the amount other than the amount liable to be deducted at source u/s 194-A(3)(ix) shall be invested/disbursed by the Tribunal.

(V) When the claimants make the application before the authority under the Income Tax Act,1961 for the refund of the amount deducted under the provisions of section 194-A(3)(ix) of the Act, the concerned authority shall decide such application with utmost expedition.

In view of the above findings, the order impugned is set aside with a direction to the Learned Tribunal to see the Insurance Company make deposit of the awarded compensation along with interest thereon by following the above mentioned procedure and thereafter comply the procedure it need to follow.

Accordingly, **C.O 105 of 2022** is allowed.

Interim order, if any, stands discharged.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J**.)