

IN THE HIGH COURT OF ORISSA AT CUTTACK

**ARBA No.1 Of 2008
(Through hybrid mode)**

D.D. Champatiray

....

Appellant

Mr. S.K. Sanganeria, Advocate

-versus-

Bharat Sanchar Nigam Ltd.

....

Respondent

Mr. S.K. Pattanaik, Advocate

CORAM: JUSTICE ARINDAM SINHA

**Order
No.**

**ORDER
17.02.2022**

3. 1. Mr. Sanganeria, learned advocate appears on behalf of appellant and submits, his client was contractor. Submission is, the Court below erred in modifying the award. That is not possible under section 34, Arbitration and Conciliation Act, 1996. Hence, the order should be reversed in appeal.
2. Mr. Pattanaik, learned advocate appears on behalf of the employer and submits, there is nothing wrong with impugned order. There should not be interference in appeal.
3. Perused impugned order. It appears, in respect of claim nos. 7 and 8 in the reference, the arbitrator awarded Rs.38,160/- to appellant. In modifying this severable part of the award, the Court below said, inter alia, as follows.

“Since, law provides that Income Tax and Sales Tax are to be deducted from the source, the Arbitrator should have taken into account the income tax

amounting to Rs.769/- (Rupees seven hundred sixty three) and sales tax amounting to Rs.1526/- (Rupees fifteen hundred twenty six) while passing the award. I am, therefore, of the opinion that the award in respect of claim items Nos.7 and 8 should be reduced by Rs.2289/- (Rupees two thousand two hundred eighty nine) (Rs.763 + Rs.1526). The award under claim items nos. 7 and 8 is, therefore, modified, accordingly.”

It is clear, the Court below modified this part of the award by reduction of aggregate Rs.2289/- on account of income tax and sales tax that, as per law, is to be deducted at source. However, there does not appear to be any discussion under these claims, as made in impugned order, on proof of the employer having deducted the same. Obviously, the award was made in absence of proof of deduction.

4. Impugned order is modified to extent of the modification made by the Court below in respect of claim nos.7 and 8 in the award. The award is restored in its entirety.

5. The appeal is thus disposed of.

(Arindam Sinha)
Judge

Sks