IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-8299-2018 (O&M)
Date of decision : 15.07.2022

Food Corporation of India & Anr. ... Petitioner(s)

Versus

Guru Nanak Plinth Ahmedgarh & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anurag Jain, Advocate for the petitioners.

Mr. D.S. Malwai, Advocate for the respondents.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed challenging the order dated 13.08.2018 vide which the objections (Annexure P-3) of the JDs-petitioners have been dismissed.

Brief facts relevant to the present *lis* are that earlier the execution filed by the DHs-respondents stood satisfied and the same was dismissed as withdrawn on 17.01.2015 on the statement of the DHs-respondents that the same stood partly satisfied. Thereafter, the present execution petition was filed stating therein that JDs-petitioners had deducted TDS (Tax Deducted at Source) on the amount paid without there being any such order in the judgment and decree passed by the Courts below. The objections were filed by the JDs-petitioners on the ground that the entire decreetal amount had been paid and the TDS deducted to the extent of Rs.2,57,697/- had duly been deposited vide receipt dated 07.05.2014 (Annexure P-8) appended with the petition. The objections were dismissed by the Executing Court only on the ground that the Executing Court could not go behind the judgment and decree and it had to execute the same as it is. Learned counsel for the petitioners would contend that deduction of TDS was made compulsory as per Section 194-I of the Income Tax Act, 1961, which reads as under:-

> *"Rent*
>
> *194-I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of rent, 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 the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of—*
>
> *(a) two per cent for the use of any machinery or plant or equipment; and*
>
> *(b) ten per cent for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings:*
>
> *Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed two hundred and forty thousand rupees :*
>
> *Provided further that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed [one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial*

> *year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section :*
>
> *Provided also that no deduction shall be made under this section where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in clause (23FCA) of section 10, owned directly by such business trust."*

Learned counsel for the JDs-petitioners would further contend that keeping in view the mandate of the Income Tax Act, 1961, TDS has been deducted.

Per contra, learned counsel for the DHs-respondents has contended that the said information was never given to the DHs-respondents and hence the JDs-petitioners ought to have paid the entire amount and not deducted the TDS. It is further the contention that there was no direction in the judgments and decrees to deduct TDS.

Heard.

In the present case, the entire decreetal amount stands paid after deducting the TDS. Deduction of TDS is in consonance with the provisions of Section 194-I of the Income Tax Act, 1961. The argument raised by learned counsel for the DHs-respondents that the said amount should not have been deducted, cannot be accepted. The said deduction is a statutory requirement and cannot be done away. The reasoning given by the Executing Court that the Court cannot go behind the decree passed by the Court cannot be upheld in the facts of the present case inasmuch as qua statutory deduction, even if the same is not mentioned in the judgment and decree, the same would have to be made.

In view of the above, the present revision petition is allowed and the objections filed by the JDs-petitioners are accepted.

Disposed off, accordingly. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

15.07.2022
Yogesh Sharma

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO