

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12429 of 2019

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New India Assurance Company Ltd. through its Deputy Manager Regional
Office 6th Floor B.S.F.C. Building Fraser Road Patna.

... .. Petitioner/s

Versus

1. The Commissioner of Income Tax Ayakar Bhawan Central Revenue Building, Birchand Patel Marg, Patna.
2. Babulal Sah S/o Late Chulhai Sah R/o Village Rampur Mahinath, P.S. Piar, District Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Priyadarshi, Advocate

For the Respondent/s : Mrs.Archana Sinha @ Archana Shahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-07-2023

The Insurance Company in the above writ petition challenged the order of the Motor Accidents Claims Tribunal, Muzaffarpur (hereinafter referred to as the 'Tribunal') which directed the Insurance Company to pay an amount of Rs. 17,126/- being the TDS deducted with interest at the rate of 9% per annum from 29.01.2008 till payment. The Insurance Company, before the Tribunal and before this Court, asserts that there can be no liability cast on the Insurance Company of a like nature. When the amounts are deducted as TDS, from the interest amounts granted in accordance with an award of the MACT, the claimant has to approach the Income Tax Department for a refund.

2. In the present case, we find an infirmity insofar



as the Tribunal having passed the order in an application in which the applicant expired when the order was passed. In the present case, a substitution petition has been filed by one Bhola Shah, aged about 41 years, son of Late Babulal Sah, the applicant before the Tribunal. The applicant is said to have died on 02.04.2015 and the order was passed on 09.02.2018, after the death. Substitution application has been filed by the Insurance Company also seeking to bring the above applicant in I.A. No. 1 of 2020 on record by I.A. No. 2 of 2023. I.A. No. 1 of 2020 is allowed and the applicant is brought on record as the legal representative of the deceased, the 2nd respondent herein. I.A. No. 2 of 2023 is closed as unnecessary. We proceed to hear the issue as agitated since the learned Standing Counsel for the Insurance Company impressed upon us the need to caution the Tribunals in such matters.

3. Both the parties are present here and even if the matter is remanded, the substituted additional second respondent will have to be heard before the Tribunal.

4. The Tribunal seems to have followed the decisions of the High Court of Bombay and Gujarat, which relied on a Division Bench judgment of the Bombay High Court in **Gauri Deepak Patel & Ors. V. New India Assurance Co. Ltd.**



& Anr.; 2011 ACJ 1782. Therein the widow, two minor children and mother of the deceased approached the Motor Vehicle Accident Tribunal for compensation. In the proceedings before the High Court, it was directed that the money awarded to the claimants be deposited and the claimants allowed to withdraw a certain portion of the amount. The respondent-Insurance Company then directed the applicant to furnish the Pan Card and photo copy for the purpose of deducting income tax at source, which was the liability of the Insurance Company, as per Section 194A(3)(ix) of the Income Tax Act 1961 (hereinafter referred to as the 'Act'). The Division Bench followed a judgment of the Hon'ble Supreme Court in **Rama Bai v. Commissioner of Income Tax; [1990] 181 ITR 400**, wherein it was held that the interest on enhanced compensation of land compulsorily acquired under the Land Acquisition Act, 1984, on a reference under Section 18 of the Act is deemed to have accrued year after year from the date of delivery of possession of the land and not on the date of the order of the Court. On the same principle, the High Court of Bombay directed the Insurance Companies to spread over the interest amount over the relevant financial year and deduct T.D.S. only if the interest for any particular financial year exceeds Rs. 50,000/-. However, the statutory provision insofar as



the liability to tax on interest income from an award of the Motor Accidents Claim Tribunal is explicit as to the year in which taxation occurs.

5. We are told by the learned Standing Counsel appearing for the Insurance Company that the Motor Accident Claims Tribunals, across the State, have been directing such refund by the Insurance Company, of amounts deducted as TDS and already credited to the Income Tax Department. It is also pointed out that the said directions are issued in total disregard of the binding precedents of two Division Bench judgments of this Court, produced as Annexure-2 series i.e. the decisions dated 20.09.2013 in CWJC No. 5352 of 2013, titled as **National Insurance Co. Ltd. vs. Commissioner of Income Tax** and dated 05.02.2015 in CWJC No. 18558 of 2012, titled as **National Insurance Co. Ltd. Vs. Union of India** and connected cases. In the order dated 20.09.2013 on similar directions issued by the Tribunal, it was found that the Tribunal had ignored the statutory duty conferred upon the Insurer under Section 194(1)[sic-194A(1)]. Following the said judgment, by order dated 05.02.2015, another Division Bench elaborately considered the matter, especially relying on decisions of the Madras High Court in **New India Assurance Co. Ltd. vs. Mani & Ors. [2004] 270 ITR 394**, the Gujarat High Court in **United India Insurance Co.**



Ltd. Vs. Mitaben Dharmeshbhai Shah & Ors.; [2004] 269 ITR 63 and Section 194A(1) and (3)(ix), to hold that the Insurance Company has a duty to deduct tax when the amount of interest credited or paid during the financial year exceeds Rs. 50,000/-. The order of the District Judge directing refund by the Insurance Company in derogation of the statutory provision was deprecated.

6. We cannot but observe that the Tribunal grossly erred in relying on a decision of the High Court of Bombay while the jurisdictional High Court held otherwise. In any event, with all the respect at our command, we cannot agree with the decision of the Bombay High Court on a plain reading of the provisions i.e. Section 194A(1) and 3(ix), which are extracted hereunder:-

“194A. (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:

Provided 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 the monetary limits specified under clause (a) or clause (b) of Section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this Section.

(3) The provisions of sub-section (1) shall not apply-
(ix) to such income credited or 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 credited or paid during the financial year does not exceed fifty thousand rupees.

7. As per Section 194A(1), 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, be liable for tax deduction at source. Hence, there can be no spread over of the interest income in the years in which it accrued after death of the person, which resulted in the compensation being awarded. We also have to notice sub-clause (ix) of sub-section(3) of Section 194A, which speaks of such exemption from deduction of tax, from the interest income, when the aggregate amount of such income credited or paid during the financial year exceeds Rs. 50,000/-. Hence, the income has to be found to have accrued only on the date of payment or credit.

8. We have to caution the Tribunals, insofar as the proper procedure being the resort to refund, if at all the claimant does not have income in excess of the taxable limit under the Income Tax Act.

9. On the above reasoning, we find that the application filed before the Tribunal was unsustainable. We,



hence, set aside the order of the Tribunal dated 09.02.2018 and caution the Tribunals from issuing such orders directing refund for the periods prior to 01.06.2015. We specifically notice that Section 194A(3)(ix) has been substituted by the Act 20 of 2015 with effect from 01.06.2015, which reads as under:-

“(3)(ix)-To such income credited by way of interest on the compensation amount awarded by the MACT.”

On the above provision coming into force from 01.06.2015, no TDS can be deducted even on the interest component. The writ petition is allowed, leaving the parties to suffer their respective costs.

10. Since, we have answered the question against the refund directed by the Tribunal, we are of the opinion that the application before the Tribunal need not be restored and the same shall stand closed as not maintainable.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	21.07.2023
Transmission Date	

