Ct. No. 652

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C.O. 2578 of 2019

United India Insurance Co. Ltd.
–Versus-
Ellora Pal & Ors.

Ms. Sucharita Paul ...For the Petitioner

Mr. Jayanta Kumar Mondal
Mr. Sayantan Rakshit ...For the Opposite Parties

This is an application under Article 227 of the Constitution of India against the order No. 21 dated 3rd July, 2019 passed by the learned Additional District Judge, 1st Court, Hooghly in Money Execution Case No. 64 of 2017 arising out of Motor Accident Claim Case No. 40 of 2005.

The petitioner contended that the applicant/ opposite party Nos. 1 and 2 along with Amiya Kumar Pal filed a claim case under Section 166 of the Motor Vehicles Act, 1988 before the Motor accident Claims Tribunal and the Tribunal on 20th August, 2011 passed an award of Rs. 9,42,000/- in favour of the applicant/opposite party Nos. 1 and 2 and directed the petitioner/Insurance Company to pay the awarded amount of Rs. 9,42,000/- within four weeks from the date of passing of the award.

The Insurance Company submits that company was not aware of the said order as due to inadvertence said order was not communicated to them. The execution case was filed for recovery of the total amount of Rs. 16,18,670/- comprising of principal sum of Rs. 9,42,000/- plus 6% interest from the date of filing of the claim case. The Insurance Company/petitioner herein has deposited the said amount after deduction of tax on the interest amount, in the name of the applicant/opposite party Nos. 1 and 2 before the aforesaid Tribunal. After two cheques were deposited before the Tribunal, the Tribunal came to a finding vide order dated

29.11.2017 that there cannot be any deduction of income tax on the interest calculated on the compensation amount and directed the petitioner to pay the deficit amount, which was deducted by the petitioner towards Tax deducted at source (TDS). Thereafter, petitioner herein filed an application for recalling of the order dated 29th November, 2017 contending that such applicants did not produce their Permanent Account Number (PAN) details and as such 20% of the interest amount has been deducted as TDS in accordance with the statutory provisions laid down in Section 194A of the Income Tax Act, 1961.

It is further stated that once an amount has been deducted, the said amount is deposited with the Income Tax Department and cannot be refunded back. However, learned Executing Court by its impugned order directed the petitioner to comply with the aforesaid previous order i.e. order No. 8 dated 29th November, 2017.

Being aggrieved by that order Ms. Sucharita Paul, learned Counsel appearing on behalf of the petitioner submits that it is mandatory upon the petitioner to deduct 20% from the amount of interest payable arising out of the Award passed in a Motor Accident Claim Case and the Tribunal has erred in not considering that the petitioner acted in accordance with the statutory provisions as laid down in Section 194A of the Income Tax act, 1961.

In this context Ms. Paul relied upon the decision in the case of ***Hansaguri Prafulchandra Ladhani & Ors. Vs. Oriental Insurance Co. Ltd. & Ors.,*** reported in **2007 ACJ 1897** wherein a Division Bench of High Court of Gujrat at Ahmedabad was pleased to held and directed the mode of deduction in case of amount of interest being deposited exceeds Rs.50,000/-

while interpreting section 194 A of the Act. Paragraph 14 runs as follows:-

"14. It is necessary to obviate such a situation in future for other claimants who may be awarded compensation with interest thereon, and the amount of interest being deposited exceeds Rs. 50,000 but who may not be liable to have any tax deducted at source as per the interpretation placed by us on the provisions of section 194-A of the Act.

We, therefore, direct that:

(I) The insurance companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accidents Claims Tribunals shall:

(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 194-A (3) (ix) of the Income Tax Act, 1961. Such amount shall not, however, straightaway be paid over to Income Tax 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 claim 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.

(II) (i) The Tribunal shall take into account the principles laid down in this judgment and ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(ii) if the interest payable to any claimant during any particular financial year exceeds Rs. 50,000, the Tribunal shall permit the insurance companies/owners to pay over the amount liable to be deducted at source under section 194-A (3) (ix) to the Income Tax Department in respect of that particular claimant for the 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, the Tribunal may permit such claimant to withdraw the amount deposited as per direction I (b) without producing the 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 under section 194-A (3) (ix) shall be invested/disbursed by the Tribunal.

(III) When the claimants make applications/representations 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 applications/representations within six months from the date of receipt of the applications/representations."

She further relied on the subsequent decision in the case of ***Gauri Deepak Patel & Ors. Vs. New India Assurance Co. Ltd. & Anr.,*** reported in **2009 SCC OnLine Bom. 2047** which followed the procedure laid down in the case of ***Hansaguri Prafulchandra Ladhani (Supra)***

Ms. Paul also referred an unreported decision of this Hon'ble Court dated 11th February, 2022 in the case of ***The New India Assurance Co. Ltd. Vs. Tapan Kumar Mondal & Anr. (C.O. 105 of 2022)*** wherein also following the procedure laid down in the case of ***Hansaguri Prafulchandra Ladhani (Supra)***, this Court directed the Insurance Company to follow the rule laid down therein by depositing the compensation amount awarded by the Tribunal which includes the amount accrued by way of interest.

Mr. Jayanta Kumar Mondal, learned Counsel appearing on behalf of the opposite parties raised strong objection contending that the award under Motor Vehicles Act is like a decree of the court and the awarded amount as well as the interest accrued therein is not taxable. In this context he relied on a Division Bench decision dated 13th September, 2012 in the case of ***Commissioner of Income Tax Vs. The Oriental Insurance Co. Ltd. (Neutral Citation No. 2012: AHC: 116292-DB.)***

Referring another decision dated 15th October, 2014 of the High Court of Himachal Pradesh, Shimla, in the case of ***Court on its own motion Vs. The H.P. State Cooperative Bank Ltd. & Ors. (CWPIL No. 9 of 2014)*** he contended that the circular dated 14.10.2011, issued by the Income Tax Authorities, whereby deduction of Income Tax has been ordered on the award amount and interest accrued on the deposit made under the orders of the court in Motor Accident Claim cases, in quashed.

He further relied on a decision dated 5th April, 2022 of the High Court of Gujarat at Ahmedabad in the case of ***The Oriental Insurance Co. Ltd. Vs. Chief Commissioner of Income Tax (TDS) (R/Special Civil Application No. 4800 of 2021)*** and contended that this court considered the procedure laid down in the case of ***Hansaguri Prafulchandra Ladhani (Supra)***, but ultimately the Court came to the conclusion that the interest awarded by the Motor Accident Claims Tribunal under Section 171 of the Motor Vehicles Act is not taxable under the Income Tax Act, 1961.

Mr. Mondal further submitted that it is not clear when the claimants/opposite parties admittedly have no PAN then how and where the said deducted amount has been deposited.

Finally, he referred the decision dated 25th October, 2018 of the High Court of Himachal Pradesh in the case of ***National Insurance Co. Ltd. Vs. Indra Devi & Ors. (CMPMO No. 330 of 2018)*** and pointed out that the deduction of Income Tax by the petitioner/Insurance Company on the awarded compensation and interest accrued thereon is not lawful and contrary to the law of land. Relying upon those judgments, he submits that the order impugned is justified and does not call for any interference.

Now, it is to be considered in the present context as to whether the interest accrued on the awarded amount is subject to payment of income tax or not and whether such amount is liable to be deducted at source.

It is true that there are divergent opinion of different High Courts in respect of the said issue but fact remains that judgment passed in ***Hansaguri Prafulchandra Ladhani (Supra)*** case is based on the decision of the Supreme Court rendered in the case of Rama Bai Vs. CIT (1990) 181 ITR 400 (SC).

The provision which has been incorporated in Section 194A (ixa) reads as follows :-

> ***" To such income paid by way of interest on the compensation amount awarded by the Motor Accident 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 fifty thousand rupees."***

Section 194 A (ixa) has been introduced by Amendment Act with effect from 1st June, 2015.

While observing that income tax has got no application in such case in the case of National Insurance Company Ltd. (supra), the court held that compensation awarded under Motor Vehicles Act or Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident is a damage and not an income and cannot be treated as taxable income, which did not consider the aforesaid amendment of section 194 A (ixa) in it's true perspective. The oriental insurance co. Ltd. (supra) judgment though discussed various judgments but it observed that Hansaguri (supra) judgment is not relevant after the insertion of section 145A(b) which states interest received by an assesse on compensation or an enhanced compensation, as the case may be, shall be deemed to be the income of the year (after reducing standard deduction @ 50% of Income as per section 57(iv) of the Act. In Hansaguri Case (supra), it was held that 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 the 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 the filing of the claim application till the date of deposit by the insurance company.

On perusal of the judgment passed in ***Hansaguri Prafulchandra Ladhani (Supra)*** case appears to be more logical in view of the fact that it speaks about spreading 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.

Accordingly, I direct the Tribunal below to follow the procedure as laid down in the case of ***Hansaguri Prafulchandra Ladhani (Supra)*** as stated above while depositing the amount of compensation, which includes interest amount

The revisional application, being C.O. 2578 of 2019 is accordingly allowed and the order impugned is hereby set aside.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)