OD-05

EC/79/2020
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

A.M. INDUSTRIES LIMITED
VS
STEEL AUTHORITY OF INDIA LIMITED.

BEFORE:
The Hon'ble JUSTICE AJOY KUMAR MUKHERJEE
Date : 12th April, 2023.

Appearance:
Mr. Debmalya Ghosal, Adv.
Mr. Tanmoy Sett, Adv.
Mr. Atish Ghosh, Adv.
Ms. Antara Dey, Adv.
...for the decree holder/plaintiff.

Mr. Arijit Basu, Adv.
...for judgment debtor.

The Court:- a short question involved herein is whether judgment debtor was justified in deducting 20% as TDS (Tax deducted at source) from the rest decreetal amount of Rs. 14,52,240/- instead of 10% in terms of Income Tax Act 1961. The admitted position in the present case is in terms of the modified judgment and order dated 28.11.2009 by the Hon'ble Appellate Court decreetal amount is Rs. 42,79,473/-. Out of said decreetal amount a sum of Rs. 26,89,856/- has been paid through Learned Registrar original side. Thereafter on 08.10.2020 an amount of Rs. 11,61,791/- was further paid on 08.10.2020. Subsequently a sum of Rs. 1,23,640/- has also been paid by judgment debtor by way of Bank transfer on 20th May, 2022.

The decree holder's case is that rest amount from the decreetal dues has not yet been paid and on the contrary it is the case of the judgment debtor that the amount of 2,90,448 which was pending for full and final settlement has been deducted as TDS against payment made by them on 08.10.2020. Further case of the decree holder is that though it is claimed that the said amount has been deducted by way of TDS but it has not been credited in the 26 A.S. account of the Income Tax portal related to the PAN number of the decree holder. Accordingly decree holder's contention is that said amount still remains outstanding towards decreetal dues.

Per contra it is submitted on behalf of the judgment debtor that judgment debtor by a letter dated 6th February, 2020 requested the decree holder to provide necessary details of the decree holder to enable the judgment debtor to make payment of the rest decreetal amount. It further appears that by letter dated 12th February, 2020 decree holder through his advocate sent bank details for payment of balance sum of Rs. 22,79,473/- after adjusting 20,00000/- which was lying deposited to the Registrar, Original Side, High Court Calcutta.

From the said letter dated 12th February, 2020 it is clear that the decree holder did not provide PAN Card details to the judgment debtor. The defendant/judgment debtor filed its affidavit on January, 18, 2023 annexing there the TDS certificate stating therein that the said amount of Rs. 2,90,448/- has been deducted @ 20% towards TDS to the Government of India. It is submitted on behalf of the decree holder that the payment of Rs.11,61,791/- was received from the defendant/judgment debtor on October, 8, 2020 and as such it was income for the assessment year 2021-2022 and any TDS deduction on the said amount will have to be deposited within the same assessment year and shall also have to be claimed within the same assessment year and due date for filing income tax return was March, 31, 2021. He further argued that for claiming TDS credit, the deductor had to upload the details of deduction to the income tax portal of the income tax department for the beneficiary to obtain such credit by uploading its details to the income tax portal within the same assessment year and if it is not done the beneficiary shall not be able to avail such credit in the next assessment year. In the present case form 16-A which was received by the decree holder shows that the defendant/judgment debtor has paid an amount of Rs. 14,52,240/- under section 194 I (B) on March, 31,2021 i.e. within the assessment year of 2021-2022 and an amount of Rs. 2,90,448/- was deducted as TDS and said amount was deposited on April, 2021 i.e. in the assessment year of 2022-2023. Accordingly decree holder contended that the payment was made in the year 2021-2022 and TDS was paid in the assessment year 2022-2023 and though they were constant vigil of the income tax portal with regard to the reflection of the TDS credit in the account of plaintiff/decree holder but such deduction did not reflect in any TDS credit deposited in the account of the plaintiff/decree holder by the defendant/judgment debtor, so he did not get any benefit.

In reply the learned counsel appearing on behalf of the judgment debtor submits that they paid a sum of Rs. 11,61,791/- out of Rs. 14,52,240/- and Rs. 2,90,448/- was deducted towards TDS at the rate of 20% due to non availability of the PAN card details of the decree holder. He further submits that by letter dated 4th May, 2022 the decree holder for the first time provided the details of its PAN card along with the copy of the PAN card and after receipt of the details of PAN card the judgment debtor has linked and uploaded the TDS certificate on 9th May, 2022. He further submits that TDS certificate cannot be uploaded without PAN card details and the decree holder is well aware of the fact that without PAN card details TDS would be deducted @ 20% and PAN details is required for linking the payment and uploading the TDS certificate. He further submits that on receipt of payment from judgment debtor, the decree holder ought to have enquired immediately about of the basis of deduction and basis of payment of Rs. 11, 61,791/- instead of waiting till May, 2022. He further contended that the decree holder claimed that he was keeping a constant vigil on the income tax portal and if that be so they were aware that the payment of Rs. 11,61,791/- was made after deduction of TDS and it was incumbent upon the decree holder to either furnish PAN card details to the judgment debtor or at least to enquire as to the reason for such non reflection of the TDS in its form 26 A.S. before filing it's return for the relevant assessment year. Accordingly he submits that execution case may be disposed of on full satisfaction as the judgment debtor has paid the entire decreetal amount to the decree holder, in terms of judgment and decree dated 23rd February, 2015 passed in C.S. no. 385/99 and as modified vide order dated November, 28, 2019 passed in the appeal preferred by the judgment debtor being APD no. 272/2015.

Having considered the facts and circumstances of the case and that admittedly the decree holder in response to the judgment debtors letter dated 6th February, 2020 has not provided PAN card details to the judgment debtor which they have provide only on 04.05.2022 and that even after receipt of amount of Rs. 11,61,791/- they have not enquired about basis of the deduction and were reluctant to take any step to that effect, I find nothing wrong in the aforesaid deduction at the rate of 20% made by the judgment debtor in compliance with section 194 I (B) of the Income Tax Act and as such I find no substance in the decree holders present prayer that the decree has not yet been satisfied fully.

In view of above the EC/79/2020 is disposed of on full satisfaction. However, this order will not preclude either of the parties to raise such issue of excess payment of tax, if any, before the appropriate authority and in the event of raising such issue, the concerned authority shall dispose of such prayer in accordance with law at the earliest.

(AJOY KUMAR MUKHERJEE, J.)