IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 11605 OF 2021

The Divisional Controller, MSRTC .. Petitioner

Versus

Sunita Suresh Modi and others .. Respondents

Shri Anand D. Wange, Advocate for the Petitioner.
Shri V. G. Kodale, Advocate h/f Shri V. D. Gunale, Advocate for the Respondent No. 2.
Mrs. Kalplata Patil Bharaswadkar, Advocate for the Respondent No. 5.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : 16TH JANUARY, 2023.

FINAL ORDER :

. Heard.

2. At the outset, learned counsel for the respondent No. 5 submits that the Chief Commissioner of Income Tax, Mumbai has been wrongly made as a party and it is the Commissioner of Income Tax Pune which would have the jurisdiction.

3. By this petition the petitioner/Maharashtra State Road Transport Corporation was aggrieved by the order dated 04th October, 2021 passed in M.A.C.P. Darkhast No. 14 of 2017 wherein recovery warrant was issued for recovery of balance amount of Rs. 41,017/- pursuant to the award dated 13th December, 2016. Award dated 13th December, 2016 was passed in M.A.C.P. No. 270 of 2012, whereby the respondent Nos. 1 and 2,

were awarded compensation of Rs. 5,18,000/- along with interest at the rate of 9% per annum on the said amount.

4. Learned counsel for the petitioner submits that the amount of Rs. 41,017/- in respect of which a recovery warrant has been issued is tax deducted at source on the interest paid on the compensation. He has invited attention of this Court to the communication dated 17th September, 2021 addressed by the respondent No. 5/Chief Commissioner of Income Tax (TDS) to the petitioner, wherein a clarification has been given that interest on such compensation is an income and is liable to be taxed. Learned counsel for the petitioner submits that the amount of Rs. 41,017/- has been deducted as tax only from the interest amount.

5. The amount which has been deducted as the tax payable on the interest amount has not been disputed by any of the parties.

6. As such the recovery warrant issued in M.A.C.P. Darkhast No. 14 of 2017 for recovery of amount of Rs. 41,017/- which was tax deducted at source, is legally unsustainable and is liable to be quashed and set aside.

7. The writ petition is allowed. The order dated 04th October, 2021 passed below Exhibit 19 in M.A.C.P. Darkhast No. 14 of 2017 is hereby quashed and set aside.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23