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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ OMP (ENF.) (COMM.) 65/2021

JOGINDER SINGH NIJJAR AND ANR .....Decree Holder
Through: Ms. Shobhana Takiar and Mr. Kuljeet Singh, Advs.

versus

M/S OMAXE LTD. .....Judgement Debtor
Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Muktibodh, Ms. Amala Diwadi and Ms. Hage Nanya, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

<u>O R D E R</u>

% **25.07.2024**

1. The petitioner is a Non-Resident Indian (NRI), in whose favour there exists an arbitral award whereunder an amount of ₹ 7,51,99,324/- along with interest has been awarded. By an order of this Court, the rate of interest payable post award was reduced.

2. The issue that has arisen for consideration is whether, from this amount, the respondent is entitled to deduct tax at source (TDS).

3. Mr. Ramesh Singh, learned Senior Counsel for the respondent submits that TDS is deductible in terms of Section 195(1) of the Income Tax Act, 1961.

4. Ms. Shobhana Takiar, learned Counsel for the petitioner, relies, *per contra*, on the judgment of the High Court of Bombay in ***Islamic***

Investment Company v. U.O.I.[1], which, in turn, relies on the judgment of the Supreme Court in ***All India Reporter Ltd. v. Ramchandra D. Datar***[2].

5. Her contention is that a reading of paras 9 and 10 of the judgment of High Court of Bombay, of which para 9 also extracts the relevant passages from ***All India Reporter Ltd***, discloses that, once an amount becomes payable to a decree holder, on assuming the character of a judgment debt, and, unless there is a provision in the Income Tax Act under which tax can be deducted at source specifically on a judgment debt, deduction of TDS is impermissible. The character of the payment, as it would have been otherwise, had it not been part of a judgment, she submits, is irrelevant.

6. Mr. Ramesh Singh, learned Senior Counsel for the respondent, while emphasising that adoption of such an interpretation would render all amounts payable under judgments and decrees tax free, seeks a day's time to address the arguments in greater detail given the financial implications of the issue.

7. Re-notify on 26 July 2024 as part-heard.

C. HARI SHANKAR, J

JULY 25, 2024
dsn

Click here to check corrigendum, if any

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[1] **2004 265 ITR 254 (Bom)**
[2] **AIR 1961 SC 943**