
(1992) 03 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 624 of 1991

Baldeep Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 16-03-1992

Acts Referred:

Income Tax Act, 1961 — Section 194A, 194A(1), 202, 204

Citation : (1992) 106 CTR 162 : (1993) 199 ITR 628

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : Rakesh Garg, for the Appellant; R.P. Sawhney and H.S. Giani, Senior Advocate, for the Respondent

Judgement

Ashok Bhan, J.—This judgment of mine shall dispose of a bunch of 174 Revision Petitions Nos. 88, 313, 483 to 490, 625, 626, 682 to 700, 727 to 731, 741 to 754, 767 to 769, 780 to 782, 831, 832, 870 to 872, 991 to 993, 1103 to 1112, 1195 to 1199 to 1204, 1284 to 1287, 1497, 1760, 1761, 1763, 1926, 1990 to 2002, 2028 to 2032, 2071 to 2088, 2187 to 2192, 2218 to 2222, 2224, 2225, 2274 to 2277, 2338, 2339, 2485, 2523, 2543, 2629, 2685, 2686, 2854, 2855, 3274 to 3279, 3285, 3413, 3414, 3444 to 3446, 3475 to 3477, 3735 to 3737, 3791, 2413 and 3626 of 1991 involving the same questions of law and facts excepting the amount of compensation being awarded to the claimants in each of the petitions. The facts are being referred to from C. R. No. 624 of 1991. The revision petition has arisen out of the following facts.

2. Land belonging to the petitioners situated in the revenue estate of Bhuchho Khurd, tehsil and district Bhatinda was acquired by the Union of India for setting up a cantonment at Bhatinda. The notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as " the Act "), was published on May 10, 1979. The Collector gave his award on March 31, 1981. The petitioners filed a reference application u/s 18 of the Act which was decided by the Additional District Judge, Bhatinda, on November 6, 1985. The enhanced compensation was paid to the

petitioners on their filing an execution application.

3. Against the award of the Additional District Judge, the petitioners filed R. F. A. No. 1356 of 1986 which was allowed on May 21, 1987, by D. V. Sehgal J., and the compensation amount payable to the petitioners was further enhanced. The respondents deposited the enhanced compensation payable to the petitioners under the orders of the High Court on December 21, 1990, in the executing court at Bhatinda along with the amount payable in some other case. The total amount payable to the petitioners was determined at Rs. 4,75,241.39 which included solatium as well as interest. The interest amount was determined at Rs. 2,87,631.70.

4. On October 22, 1990, the Assistant Director of Income Tax (Investigation) wrote a letter to the executing court, Bhatinda, requesting it to make payment of the interest payable to the petitioners after deducting the amount equal to ten per cent. of the total interest in terms of Section 194A of the Income Tax Act, 1961 (hereinafter referred to as " the Income Tax Act "), The petitioners applied to the executing court for payment of the amount deposited with it by the respondents-Union of India. Ahlmad of the court put up a note on this application, the relevant portion of which reads as under :

" That, as per the letter dated October 22, 1990, addressed to this court by the Income Tax Department, it is submitted that ten per cent. out of the interest from the deposited amount may be deducted before making the payment. According to statement of the Defence Estate Officer, Chandigarh, Rs. 2,87,631.71 amount to interest in the above-said amount. Ten per cent. of it comes to 28,763.17. After deducting this amount out of the total amount of Rs. 4,75,241.91, an amount of Rs. 4,46,478.74 is payable to the applicant. "

5. Before the Additional District Judge, the plea taken by learned counsel appearing for the petitioners was that the executing court was not a person responsible for paying any income by way of interest u/s 194A of the Income Tax Act, 1961, and, therefore, the executing court should not deduct any amount and should order payment of the whole of the amount deposited with it by the respondents without making any deductions. This plea was not accepted by the Additional Sessions Judge. It was held that the executing court is bound to deduct ten per cent. out of the interest amount payable u/s 194A of the Income Tax Act. Accordingly, the executing court ordered the payment of Rs. 4,46,478.74 after deducting Rs. 28,763.17 out of the total amount deposited in the names of the petitioners in the executing court. The petitioners have come up in revision challenging the order of the Additional Sessions Judge.

6. Mr. Rakesh Garg, learned counsel appearing for the petitioners at the initial stage, raised the following four points :

(i) That the executing court cannot go behind the decree and the decree has to be executed without making any additions or alterations in it ;

(ii) that, under the Land Acquisition Act, interest is awarded under the statutory provisions of the Act and the same being an integral part of the compensation, no deductions could be made in view of Section 52A of the Land Acquisition Act (Local Amendment by Punjab Government) ;

(iii) (a) that the executing court is not the person responsible for paying any income by way of interest and the same could only be the Land Acquisition Collector. Therefore, the executing court cannot deduct Income Tax on the decretal amount u/s 194A of the Income Tax Act ;

(b) that Section 194A envisages the tax to be deducted at source either 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. In this case, the amount stood credited to the account of the payee when the Land Acquisition Collector deposited the money in the court from its accounts and, therefore, only the Land Acquisition Collector could deduct the Income Tax at source at the time of credit of the income to the account of the payee and not when it is actually being paid by the executing court as the credit entry was prior in point of time to the actual payment ; and

(iv) that the executing court failed to provide an opportunity to the petitioners in terms of the proviso to Section 194A and Sub-section (3) of Section 194A of the Income Tax Act.

7. At the time of arguments, learned counsel appearing for the petitioners gave up points (i) and (ii), referred to above, and did not advance any arguments on the said points.

8. First of all, a synopsis of the chapter on deductions of Income Tax at source may be noticed. Chapter XVII of the Income Tax Act deals with collection and recovery of tax. One of its sub-heads deals with deduction at source containing Sections 192 to 206B with which we are concerned in these revision petitions.

9. There are two broad heads of tax-levy. One is direct levy and the other is levy by deduction at source. Deduction at source is considered to be a more efficacious method of tax collection since it effects early realisation and saves the time of the Income Tax staff inasmuch as all calculations and other attendant workings are performed by the persons responsible for paying. Incomes which are subject to tax deduction at source are of many types including salary income (Section 192), interest on securities (Section 193), dividends (Section 194), interest other than interest on securities (Section 194A), and so on and so forth, the last being u/s 196B on any income payable in respect of units referred to in Section 115AB to an off-shore fund. A person responsible for paying the salary income, interest income, etc., is responsible for deducting the tax at source from the prescribed income and paying it to the credit of the Central Government and doing other things in the prescribed manner including the issuance of a certificate for the tax deducted at source to the assessee. The person deducting the tax at source is to be allotted a tax deduction account number (Section

203A) which he has to mention in all his communications like an Income Tax payee to the Department. Section 200 casts a duty on the said person to deposit the tax deducted at source within a specified time to the credit of the Central Government or as the Board directs. The said person, if he fails to deposit the tax deducted at source under certain circumstances, can be deemed to be an assessee in default in respect of tax and becomes liable to certain penalties (Section 201). Section 204 defines the " person responsible for paying ". Section 206 prescribes the filing of returns by the prescribed person in such form and verified in such manner and setting forth such particulars as may be prescribed from time to time.

10. In order to appreciate the main contention raised by learned counsel appearing for the petitioners, the relevant extract of Section 194A and Section 204 of the Income Tax Act, 1961, are reproduced below :

" 194A. Interest other than " interest on securities ".--(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 no such deduction shall be made in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment--

(a) an affidavit, or

(b) a statement in writing,

declaring that his estimated total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to Income Tax.

Explanation.--For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly. . . .

(3) The provisions of Sub-section (1) shall not apply--

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in Sub-section (1) to the account of, or to, the payee, does not exceed two thousand five hundred rupees ; . . ."

" Section 204. Meaning of "person responsible for paying ".--For the purposes of Sections 192 to 194, Section 194A, Section 194B, Section 194BB, Section 194C, Section 194D, Section 194E, Section 194EE, Section 194F, Section 194G, Section 194H, Sections 195 to 203 and Section 285, the expression "person responsible for paying" means :--

(i) in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a company, the company itself, including the principal officer thereof ;

(ii) in the case of payments of income chargeable under the head "Interest on securities", other than payments made by or on behalf of the Central Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof;

(ia) in the case of any sum payable to a non-resident Indian, being any sum representing consideration for the transfer by him of any foreign exchange asset, which is not a short-term capital asset, the authorised dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 (46 of 1973), and any rules made thereunder ;

(iii) in the case of credit or, as the case may be, payment of any other sum chargeable under the provisions of this Act, the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

Explanation.--For the purposes of this section,--

(a) "non-resident Indian" and "foreign exchange asset" shall have the meanings assigned to them in Chapter XIIA ;

(b) "authorised dealer" shall have the meaning assigned to it in Clause (b) of Section 2 of the Foreign Exchange Regulation Act, 1973 (46 of 1973). "

11. Learned counsel appearing for the petitioners contended that the court is not a " person responsible for paying " any income by way of interest to the petitioners and, therefore, cannot deduct the tax at source in terms of Section 194A, that the person responsible for paying income by way of interest in this case shall be the Special Land Acquisition Collector and the court is acting only as a conduit for making the payment. According to this section, the person responsible for paying, in the case of payments of income chargeable under the head " Salaries " other than payments by the Central Government and the Government of a State, is the employer himself, in the case of interest on securities, the borrower, and regarding any other sum chargeable under the Act, the payer himself. The stress of learned counsel appearing for the respondents is on Clause (iii) of Section 204, which says that, in the case of any other sum chargeable under the Act, the person responsible for paying would be the payer himself. In this particular case, the court being the actual and the last payer of

the amount to the petitioner, therefore, shall be the person responsible for deducting the tax at source and deposit the same with the Union of India.

12. After considering the submissions of counsel for the petitioners, I am of the view that court is not the person responsible for paying any income by way of interest to the petitioners. Section 194A(1) talks of " a person responsible for paying " an income by way of interest. The court is not the person responsible for paying any income by way of interest to the assessee. As per legal incidents, the real person responsible for paying income by way of interest is the Land Acquisition Collector who had the money in his possession and was responsible for making the payment of that income to the petitioners. The court is not the person responsible for paying any income by way of interest to the petitioners. The court is acting only as a conduit for getting the payment made to the petitioner in execution of a decree passed in his favour. Under Order XXI, Rule 1, Civil Procedure Code, all money payable under a decree has to be paid as follows, namely :

" (a) by deposit into the court whose duty it is to execute the decree, or send to that court by postal money order or through a bank ; or

(b) out of court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing ; or

(c) otherwise, as the court which made the decree, directs.

(2) Where any payment is made under Clause (a) or Clause (c) of Sub-rule (1), the judgment-debtor shall give notice thereof to the decree-holder either through the court or directly to him by registered post, acknowledgment due.

(3) Where money is paid by postal money order or through a bank under Clause (a) or Clause (b) of Sub-rule (1), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely :

(a) the number of the original suit ;

(b) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants ;

(c) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs ;

(d) the number of the execution case of the court, where such case is pending ; and

(e) the name and address of the payer.

(4) On any amount paid under Clause (a) or Clause (c) of Sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in Sub-rule (2).

(5) On any amount paid under Clause (b) of Sub-rule (1), interest, if any, shall cease to run from the date of such payment :

Provided that, where the decree-holder refuses to accept the postal money order or payment through a bank, interest shall cease to run from the date on which the money was tendered to him, or where he avoids acceptance of the postal money order or payment through bank, interest shall cease to run from the date on which the money would have been tendered to him in the ordinary course of business of the postal authorities or the bank, as the case may be. "

13. Thus, a money decree can either be paid through the process of court, at the direction of the court or out of court by postal money order or through a bank or by any other mode wherein payment is evidenced in writing. If the contention of learned counsel appearing for the respondents is accepted, then, where the money is being remitted through postal money order or through a bank or against a receipt then the person who is actually making the payment, that is to say, the postmaster, the person who is preparing the cheque in a bank or the person who prepares a writing evidencing the payment thereof, shall become " a person responsible for paying " which is not the intention of the Legislature. The money is deposited in the court by a judgment-debtor for onward payment to the decree holder. The interest on the amount ceases to run from the date of the service of the notice on the decree-holder by the judgment-debtor to the effect that the money has been deposited in the court. Where money is paid by depositing in court, the decree-holder has to state in his application, the number of the original suit, names of the decree-holders and how the money remitted is to be adjusted, that is, whether it is towards principal, interest or costs. An entry is made by the judgment-debtor in his books of account showing the remittance of the amount to the decree-holder. It is at this point of time that the tax at source is to be deducted. This can further be explained by another example : supposing a suit is filed in the year 1980 against a partnership concern for recovery of five lakhs of rupees with future interest at the rate of 18 per cent. annum. The suit is ultimately decreed in the year 1985 and the judgment attains finality between the parties and the judgment debtor files an application for execution of the decree. Where the judgment-debtor, in compliance with the notice issued by the court or otherwise, deposits the principal amount along with the interest thereon without deducting the tax at source, the court would not be " a person responsible for paying " an income to the decree-holder. Certain responsibilities and liabilities are cast upon the person responsible for paying under this Chapter. The person responsible for paying has to obtain a permanent account number, keep an account of the various payments made, file the return and in case of default, certain liabilities, penal or otherwise, are attached. If the argument of learned counsel appearing for the respondents is accepted, then the person who makes the payment in the last, becomes the payer of the money and thus liable to deduct the tax at source and deposit the same with the Central Government, which is not the intention of the Legislature ; the intention of the Legislature is that a person who is responsible for paying an income by way of

interest has to deduct the tax at source and deposit the same with the Central Government and not the last person who is actually making the payment. This can further be exemplified where a person remits the money by way of income of interest through a postal money order but fails to deduct the tax at source, can he shift the liability of deducting the tax at source to the postal authorities being the last person who has made the payment and thus becomes a payer in terms of Section 204(iii) of the Income Tax Act ? The answer is clearly " No ". " The person responsible for paying " in such a case, is the person who had borrowed the money and was responsible for paying income by way of interest, and no other person.

14. Section 194A contemplates deduction of tax at two stages, namely, (a) at the time of credit of such income to the account of the payee, or (b) at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier. When the Special Land Acquisition Collector deposited the money in the court from its accounts for payment to the petitioners in order to satisfy the decree, he must have made an entry of credit to the account of the payee and that being the moment earlier in point of time to the actual payment which is being made by the court, the tax at source had to be deducted by him. The liability to deduct the tax from the interest and to pay the same to the Revenue would arise when the amount is credited to the creditors' account and not when the actual payment is made because an entry regarding credit is made earlier in point of time to the actual payment. Income Tax is a levy on income. There are two points of time at which liability to deduct the tax at source arises and the tax has to be deducted at a point of moment which is earlier. In this particular case, the amount having been credited to the account of the payee at a point earlier in time, the tax at source had to be deducted at a point or moment which is earlier in time and not when actual payment was made by the court in execution of the decree.

15. The next contention raised by learned counsel appearing for the petitioners is that the executing court failed to provide an opportunity to the petitioners in terms of the proviso to Section 194A (1) and Sub-section (3) of Section 194A of the Income Tax Act, which contemplates giving of an opportunity to the assessee to furnish an affidavit, or a statement in writing to the person responsible for making the payment declaring that his estimated total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to Income Tax and thus exempt the deduction of Income Tax at source or that the income being less than two thousand five hundred rupees not liable to the provisions of Section 194A for the purpose of deduction of Income Tax at source. It was also contended that since the income by way of interest so received was to be spread over all the years for the purpose of assessment of Income Tax from the time it became due, the action of the court in deducting the tax is liable to be set aside.

16. I have already held that the court is not the person responsible for making

the payment of the income to the petitioners and, therefore, no tax at source could be deducted by the court at the time of actual payment of the money to the petitioners but in any case, whosoever would be the person responsible for making the payment by way of interest has to follow the procedure laid down in Section 194A, in terms of the Division Bench judgment of this court in C. W. P. No. 10749 of 1991, decided on December 13, 1991 (Tuhi Ram Vs. Land Acquisition Collector and Another,), in the following terms (at page 506) :

" Before parting with the case, we would like to mention, and indeed learned standing counsel for the Department duly assisted by responsible officers of the Department, candidly conceded before the court, that the income by way of interest received as above shall have to be spread over all the years for the purpose of assessment of income tax from the time it became due. This course has to be adopted for the assessment of Income Tax indicated by the Supreme Court in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, and K.S. Krishna Rao Vs. Commissioner of Income Tax, Andhra Pradesh, . The observation is that, where the compensation awarded under the Land Acquisition Act is enhanced by the order of the court on a reference u/s 18 of the Act or on further appeals, interest on enhanced compensation cannot be taxed all in a lump sum as having accrued on the date on which the court passes the order for enhanced compensation ; the interest has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the court on a time basis.... in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment-(a) an affidavit, or (b) a statement, in writing, declaring that his estimated total income assessable for the assessment year next following the financial year in which the income is credited or paid would be less than the minimum liable to Income Tax. ..."

17. Counsel appearing for the Department of Income Tax, Mr. R. P. Sawhney, contended that Section 194A is a machinery section and has to be interpreted in a manner by which the object of the Act is effectuated rather than frustrated and, therefore, the court being the last person making the payment is responsible for deducting the tax at source.

18. I do not find any substance in this submission of learned counsel appearing for the respondents. To my mind, the working of the section leaves no manner of doubt that the court is not the person responsible for paying income or interest. Had two interpretations been possible, then the one which would further the object of the Act should be adopted but where only one interpretation is possible, as in this case, the provisions of the Act have to be interpreted in their plain terms without adding to or subtracting anything from it. Moreover, there should be no loss to the Revenue. Section 202 of the Income Tax Act, 1961, provides that the deduction at source is only one mode of recovery of tax which shall be without prejudice to any other mode of recovery. Section 202 preserves the

general powers of levy of tax on, and recovery from, the assessee directly, notwithstanding any provisions for deduction of tax at source from any type of income. Recovery of such tax can be effected by any other mode prescribed under the law.

19. For the foregoing reasons, the revision petitions are accepted, the impugned order of the trial court is set aside and it is held that the court is not " the person responsible for paying " an income by way of interest to the petitioners while executing the decree. No costs.

20. It was pointed out during arguments by learned counsel appearing for the petitioners that this court, at the time of motion hearing, passed an order in some cases that the amount deducted u/s 194A of the Income Tax Act, by way of income on interest by the District Judge be deposited in the bank subject to the decision of these revision petitions. In cases where such order was passed, it is directed that the amount which was deposited in banks under the orders of this court or the amount which has not been remitted by the court to the Revenue be paid to the petitioners. If the amount deducted at source has been remitted to the Revenue authorities, then the petitioners shall be entitled to its being accounted for and its refund in accordance with law.