
(2002) 10 MP CK 0079

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 441 of 1991 4 October 2002

Kranti Kumar Saxena, In Re

Date of Decision : 04-10-2002

Acts Referred:

Banking Regulation Act, 1949 — Section 36, 51
Civil Procedure Code, 1908 (CPC) — Section 113
Foreign Exchange Regulation Act, 1973 — Section 2
Income Tax Act, 1961 — Section 192, 193, 194, 194A, 194B
Land Acquisition Act, 1894 — Section 18, 30, 4

Citation : (2002) 178 CTR 455 : (2003) 131 TAXMAN 378

Hon'ble Judges : A.K. Gohil, J

Bench : Division Bench

Advocate : R.L. Jain, for the Revenue and V.P. Khare, for the State and None, for the Assessee, for the Appellant;

Judgement

A.K. Gohil, J.

The Fifth Addl. Judge, to the Court of District Judge, Indore has referred the following questions for answer by this court u/s 113 read with order XLVI, rule 1 of the CPC :

"(a) That whether the provisions of section 194A of Income Tax Act, 1961, is applicable in its strict sense to the court of reference under sections 18 and 30 of Land Acquisition Act ?

(b) If so, whether the court is liable to deposit the deducted amount by TDS challan and to issue deduction certificate in Form 25A of Income Tax Rules and to file the return like a private individual ?

(c) If not, then at then at what point of time and by whom this tax is to be deducted ?

(d) whether the court of reference can itself retain the amount of approximate tax and inform concerned Income Tax Officer to collect it by means of voucher ?"

2. After receiving this reference, notices were issued to all the concerned parties.

Nobody appeared on behalf of the claimants even after issuance of S.P.C. and repeated registered notices by this court. Shri V.P. Khare, learned Deputy Govt. Advocate, appeared for the state.

3. The reference court has stated the following facts for recording opinion of this court that at the instance of Executive Engineer, Public Works Department, Madhya Pradesh, the lands situated at Jawahar Marg, Indore, were acquired for construction of Siyaganj Over-bridge by the Collector and Land Acquisition Officer, Indore, and in this connection Land Acquisition Case No. 116 A/82/73-74 was instituted at the instance of one Parwatibai w/o Modilal and his husband Modilal s/o Birdichand, the occupier of the abovementioned land and property in the court of Land Acquisition Officer, Indore. An award was passed in favour of Parwatibai and Modilal to the tune of Rs. 51,801.75. Thereafter the aforesaid persons made a request for a reference against the aforesaid award to the Court of Addl. Judge to the Court of District Judge, Indore. The reference was u/s 18 of the Land Acquisition Act. The reference was registered in the Court of Addl. Judge to the court of District Judge, Indore as Land Acquisition Case No. 8/1986 and by award dated 30-6-1990 (Annexure "A") the amount of compensation was enhanced to the tune of Rs. 2,99,355 including the amount of solatium. Interest at the rate of 12 per cent per annum on the market value of the property i.e., 1,93,050 was also allowed from the date of publication of notification u/s 4 of the Land Acquisition Act, i.e., from 26-7-1974, to the date of delivery of the possession to the claimants and interest on enhanced amount of Rs. 2,36,378.40 at the rate of 9 per cent per annum was also allowed from the date of delivery of possession of the date of completion of one year and subsequently at the rate of 15 per cent per annum till the date of deposit of the amount of award. The State of Madhya Pradesh preferred appeal against this award before the High Court of Madhya Pradesh, Bench at Indore. This appeal was registered as First Appeal No. 44 of 1991, which was dismissed on 22-7-1991, as barred by limitation by 147 days. Thereafter the claimants filed execution petition before the Addl. Judge to the Court of District Judge, Indore and the said execution was registered as Execution Case No. 8/86/91 and an amount of Rs. 7,89,576.50. was deposited by the state i.e., at the instance of Executive Engineer, P.W.D., Indore, when claimants applied for withdrawal of this amount from the court, the Land Acquisition Officer, Indore, informed this court vide letter dated 23-8-1991, (Annexure "B"), stating therein that income tax on the amount of interest is to be deducted before payment of this amount to the claimants and requested the executing court for the deduction of income tax. In this reference petition it has been stated on behalf of the executing court that firstly the executing court decided to deduct this amount and to credit it to the Income Tax Department but later on u/s 194A of the Income Tax Act, 1961, it appeared to the court that tax on the amount of interest is to be deducted by the person who is actually responsible for its payment and that is to be deducted at the earliest point of time. Thereafter the court sent back the above amount by means of a voucher dated 9-10-1991 (Annexure "C"), to the Collector and Land Acquisition Officer

with a direction to deduct the tax and to credit it to the Income Tax Department and then to remit the rest of the amount along with the challan copy for further proceedings. The Land Acquisition Officer, Indore, vide letter dated 14-10-1991 (Annexure "D"), replied and denied his liability to deduct the tax and directed the court to do so. Therefore, on the aforesaid facts, the court has formulated the aforesaid questions and had sought opinion of this court.

4. I have heard Shri R.L. Jain, learned counsel appearing for Income Tax Department of the Union of India and also Shri V.P. Khare, learned Deputy Government Advocate for the State of Madhya Pradesh. None has appeared on behalf of claimants.

5. Shri R.L. Jain submitted that u/s 194A of the Income Tax Act, 1961, tax is to be deducted by the person responsible for paying any income by way of interest and has also placed reliance on a decision in the case of Baldeep Singh Vs. Union of India (UOI) and Another, in which it has been held by the Punjab & Haryana High Court that the executing court is not the person responsible for paying the interest. Therefore, the executing court is not liable to deduct tax at source on such interest. It is the person responsible for paying "any income by way of interest" is responsible.

His further submission is that u/s 194A of the Income Tax Act, 1961, in its strict sense is not applicable on the reference cases under sections 18 and 30 of the Land Acquisition Act and, therefore, the court is not liable to deposit the deducted amount by TDS challan. Since the amount of tax is not to be deducted, there is no need to issue deduction certificate in Form N. 25A of the Income Tax Act and there is also no need to file the return like a private individual. The court is acting only as a conduit for getting the payment made to the petitioner in execution of a decree. The real person responsible for paying income tax by way of interest is the Land Acquisition Officer who had the money in his possession.

6. Shri V.P. Khare, learned Deputy Government Advocate for state, also supported the submissions made by Shri Jain on behalf of the Income Tax Department/Union of India. His further submission is that though the court is not responsible but the Land Acquisition Officer is certainly the officer responsible for paying the income by way of interest to the claimants.

7. In order to appreciate the arguments as advanced by the learned counsel for parties appearing before me, it is necessary to quote the provisions of section 194A and section 204 of the Income Tax Act, 1961 which reads as under :

"194A. Interest other than "Interest on securities".(1) Any person, not being an individual or an HUF, 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 :

(***) Omitted by the Finance Act, 1992, with effect from 1-6-1992.

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.

((2***) Omitted by the Finance Act, 1992 with effect from 1-6-1992. (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 :

Provided that in respect of the income credited or paid in respect of :

(a) time deposits with a banking company to which the Banking Regulation Act, 1949(10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long term finance for construction or purchase of houses in India for residential purposes and which is for the time being approved by the Central Government for the purpose of clause (viii) of sub section (1) of section 36,

the provisions of this clause shall have effect as if for the words "two thousand five hundred rupees", the words "ten thousand rupees" had been substituted and the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co operative society or the public company, as the case may be :

(ii) to such income credited or paid before the 1-10-1967

(iii) to such income credited or paid to :

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co operative society engaged in carrying on the business of banking (including a co operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co operative society carrying on the business of insurance, or

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.,

(iv) to such income credited or paid by a firm to a partner of the firm

(v) to such income credited or paid by a co operative society to a member, thereof or to any other co operative society to a member, thereof or to any other co operative society;

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1-7-1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act),

(viia) to such income credited or paid in respect of,

(a) deposits with a primary agricultural credit society or a primary credit society or a co operative land mortgage bank or a co operative land development bank ,

(b) deposits (other than time deposits made on or after the 1-7-1995) with a co operative society, other than a co operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;

(viii) to such income credited or paid by the Central Government under any provisions of this Act or the Indian Income Tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth Tax Act, 1957 (27 of 1957), or the Gift Tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest Tax Act, 1974 (45 of 1974).

Explanation : For the purposes of clauses (i), (vii) and (viia), "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods;

(4) the person responsible for making the payment referred to in sub section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(**) Omitted by the Finance Act, 1992, with effect from 1-6-1992."

"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, section 194I, section 194J, section 194K, section 194L section 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 payment 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 XII A :

(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). "

8. This section 194A has been inserted in the Income Tax Act, 1961, by the Finance (No. 2) Act, 1967, with effect from 1-4-1967, which relates to deduction of income tax at source from interest. Under this new section tax deduction at source is permissible in respect of interest on compensation on compulsory acquisition of land and also accrued on enhanced compensation u/s 18 of the Land Acquisition Act where the total income assessable to tax exceeds taxable limit, interest accrued after order from the date of delivery of possession of land till the date of order granting enhanced compensation and its yearwise break up shall be taken into account. This section has to be read in conjunction with section 204 which furnishes the meaning of "person responsible for paying". Where land is compulsorily acquired and the money to be paid as enhanced compensation, is deposited in the execution court and interest is awarded on such compensation, the court is not the person responsible for paying any income by way of interest to the assessee. The real person responsible for paying

income tax by way of interest is Land Acquisition Officer/Collector who had money in his possession and was responsible for making the payment of that income to the assessee.

9. It has been clearly held by the Division Bench of Punjab & Haryana High Court in the case of Tuhi Ram Vs. Land Acquisition Collector and Another, that the income tax is payable only on the amount of interest payable as compensation for the acquisition of any property and the income by way of interest so received as above has to be spread over all the years for the purpose of assessment of income tax from the time it becomes due.

10. Therefore, in view of the aforesaid submissions and in view of the foregoing discussions in the opinion of this court answer to question (a) is that u/s 194A of the Income Tax Act, 1961, the tax deduction at source is permissible in respect of interest accrued on interest payable on enhanced compensation under sections 18 and 30 of the Land Acquisition Act. As regards question (b) the court is not liable to deposit the tax by TDS challan and to issue deduction certificate in Form No. 25A of the Income Tax Rules and to file the return like a private individual, since the amount of tax is not to be deducted by the court. As regards question (c), as per the decisions and provisions of section 194A read with section 204 of the Income Tax Act, 1961, the court is not the person responsible for paying any income by way of interest to the assessee, the real person responsible for paying income by way of interest is the Land Acquisition Officer or Collector who had the money in his possession. The court is acting only as a conduit for getting the payment made to the claimant in execution of a decree passed by the court and the opinion on question (d), since there is no liability of court to deduct tax u/s 194A of the Act, the court need not to retain the amount of approximate tax and to inform concerned Income Tax Officer to collect it by means of voucher.

11. Registry is directed to forward the aforesaid opinion recorded by this court to the court of Vth Addl. Judge to the Court of District Judge, Indore, for disposal of the execution in accordance with law.

OPEN