

(1994) 11 MAD CK 0087
In the Madras High Court

Leema Resorts Private Limited and Another
Vs

APPELLANT

C.G. Suryakant and Others

RESPONDENT

Date of Decision : 08-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 194I

Citation : (1995) 1 MLJ 585

Hon'ble Judges : K.A. Swamy, C.J

Bench : Single Bench

Judgement

K.A. Swamy, C.J.—This petition is filed by the appellants in Contempt Appeal No. 5 of 1994 who are the tenants of the premises concerned in that appeal, for permitting them to deduct 20% out of the sum of Rs. 10 lakhs paid on 1.8.1994 and Rs. 3 lakhs payable on or before 10.9.1994 and in subsequent monthly payments, as per order dated 2.8.1994 passed in Contempt Appeal No. 5 of 1994.

2. Contempt Appeal No. 5 of 1994 was preferred against the order dated 21.7.1993 passed by the learned single Judge in Contempt Application No. 596 of 1992 finding the appellants guilty of contempt of court and imposing a fine of Rs. 1,500, in default, to undergo simple imprisonment for a period of 30 days. The complainants also filed L.P.A. No. 172 of 1993 against the very order dated 21.7.1993 passed in Contempt Application No. 596 of 1992.

3. Both L.P.A. No. 172 of 1993 and Contempt Appeal No. 5 of 1994 were heard together and decided by a common judgment dated 29.7.1994. We agreed with the finding recorded by the learned single Judge that the appellants in Contempt Appeal No. 5 of 1994 were guilty of Contempt of Court for having wilfully disobeyed the orders of this Court. However, we did not agree with the sentence imposed by the learned single Judge. Hence we altered the sentence by directing that the appellants in the contempt appeal should be detained in civil prison for a period of two months. The imposition of fine was also affirmed. It was also further ordered that the detention would come to an end no sooner the amount

is deposited as ordered in the case or paid to the plaintiffs in the suit. However, the appellants in the contempt appeal undertook to pay a sum of Rs. 10 lakhs on or before 1.8.1994. Therefore, we postponed the enforcement of the order and directed the matter to be called on 1.8.1994 at 2.15 p.m. On 1.8.1994 when the matter was called the appellants paid a sum of Rs. 10 lakhs and as requested by both sides we adjourned the case to 2.8.1994 and kept our judgment dated 29.7.1994 in abeyance till 2.8.1994. On 2.8.1994, the appellants in Contempt Appeal No. 5 of 1994 filed an undertaking to pay the remaining amount in instalments. After hearing both the sides, we passed the following order:

We have recorded yesterday the payment of a sum of Rs. 10 lakhs to the appellants in L.P.A. No. 172 of 1993. Today, the case was posted for further orders as to implementation of our judgment dated 29.7.1994. Today, the appellants in Contempt Appeal No. 5 of 1994 have filed an undertaking which reads thus:

"The appellant undertakes to deposit a sum of Rs. 3,00,000 (Rupees three lakhs only) per month towards compliance of the order in Application No. 4181 of 1991 in C.S. No. 978 of 1991.

The payment to be made on or before 10th of every succeeding month commencing from 10.9.1994. Out of this a sum of Rs. 2,15,000 (Rupees two lakhs and fifteen thousand only) will be towards arrears and Rs. 85,000 (Rupees eighty five thousand only) towards current payment. The moment the arrears are cleared the monthly payment will be Rs. 85,000 (Rupees eighty five thousand only) as per order in Application No. 4101 of 1991.

The undertaking is placed on record. However, for the undertaking to be effective, it must be necessary that there must be a defaulting clause and the consequences flowing out of such default. Therefore, placing on record the memo of undertaking, we postponed the implementation of our judgment directing the appellants in Contempt Appeal No. 5 of 1994 to be put in civil prison on the following conditions. The appellants in Contempt Appeal No. 5 of 1994 as per the undertaking shall pay to the appellants in L.P.A. No. 172 of 1993 a sum of Rs. 3 lacs per month on or before 10th September, 1994. Thereafter, the further payments are to be made on or before the 10th of each succeeding month. The appellants in L.P.A. shall execute proper stamped receipt for having received the same. Out of the aforesaid sum of Rs. 3 lacs, Rs. 2,15,000 will be towards the arrears and Rs. 85,000 will be towards the monthly rent. The receipts shall also be given accordingly. As soon as the entire arrears are wiped out, the appellants in Contempt Appeal No. 5 of 1994 will continue to pay only a monthly rent of Rs. 85,000. If any one default is committed, the respondents in Contempt Appeal No. 5 of 1994 shall immediately bring it to the notice of the court by filing a memo after serving a copy of the learned Counsel appearing for the appellants in Contempt Appeal No. 5 of 1994 the default committed by the appellants and seek appropriate orders for implementation of our judgment dated 29.7.1994. In the event without any default the directions are complied with, that shall also be

reported to this Court for passing orders as to the implementation of the judgment dated 28.7.1994.

It is reported to us that the appellants in Contempt Appeal No. 5 of 1994 have been paying the amounts accordingly.

4. In the meanwhile, the Income Tax Officer, TDS, Madras-6, has issued a notice dated 2.9.1994 to the appellants in the Contempt Appeal, which reads thus:

As per Section 194-I of the Income Tax Act newly introduced with effect from 1.6.1994 any person other than individual and HUF who is responsible for paying any income by way of rent exceeding Rs. 1,20,000 during the financial year shall at the time of credit in the amount/payment/making adjustment etc., whichever is earlier, deduct Income Tax at source at the rate of 20% and remit the amount to Government of India account. "Rent" here means any payment by whatever name called, under lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building) together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee.

In this connection, you are requested to furnish information as per proforma enclosed. Your reply may be handed over to the Inspector and bearer of this notice who will collect the same after two days.

In the light of the aforesaid notice, the appellants in the contempt appeal have filed the present petition for permission to deduct 20% of the amount paid, as indicated above.

5. As the prayer in the instant petition related to deduction of income tax at source, we considered it necessary to hear the learned Senior Standing Counsel for the Department. Accordingly, learned Senior Standing Counsel for the Department was directed to take notice for the Department and assist the court in the matter. Learned Senior Standing Counsel has accordingly put in appearance for the Department and argued the matter.

6. The question for consideration is as to whether the provisions of Section 194-I of the Income Tax Act are attracted to the case on hand: and if so, whether the petitioners/appellants in contempt appeal should be permitted to deduct 20% out of the sum of Rs. 10 lakhs paid on 10.8.1994 and further two payments of two instalments of Rs. 3 lakhs each, being the monthly instalments for September and October, 1994.

7. It is the contention of the learned Senior Standing Counsel for the Income Tax Department that Section 194-I which came to be inserted in the Income Tax Act with effect from 1.6.1994 by the Finance Act, 1994 is attracted to the case on hand, not only in respect of rent payable for the current year viz., for the period from 1.4.1994 onwards, but also to the period prior to 31.3.1994 and paid subsequent to 1.6.1994.

8. As far as the appellants in the contempt appeal are concerned, it is their submission that they have paid the amount to the landlords, respondents in the contempt appeal as also in the instant petition, as per the direction of this Court and that they had been left with no option but to obey and comply with the order of the court, as such there was no scope left to them to comply with Section 194-I of the Act. As there was sufficient cause for them in not complying with the provisions of Section 194-I, suitable directions may be issued to the Department in this regard to permit them to deduct 20% of the amount paid.

9. Learned Counsel for the respondents in this petition submits that as the annual rent payable for the premises in question by the petitioners exceeds Rs. 1,20,000 the provisions of Section 194-I are attracted in respect of the rent payable for the financial year 1994-95 i.e., for the period from 1.4.1994 to 31.3.1995, and also for subsequent years. It is further contended that the arrears of rent relatable to the period prior or upto 31.3.1994, even though paid subsequent to 1.6.1994, cannot be subjected to the provisions contained in Section 194-I, because if the rents would have been paid during that period, no such deduction could have been made. Therefore, the mere fact that the payment has been made subsequent to 1.6.1994, the provisions of Section 194-I cannot be applied to it. If applied, that would amount to applying the provisions of that section with retrospective effect, which the Financial Act, 1994 does not provide, as the said section is introduced with effect from 1.6.1994.

10. In the light of these rival contentions, our decision would depend upon the interpretation of the provisions contained in Section 194-I of the Act, and also the definition of the expression "Financial Year" contained in the Act. Section 194-I of the Act reads thus:

194-I. Any person, not being an individual or a Hindu undivided family who is responsible for paying to any person any income by way of rent, 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 the issue of a cheque or draft or by any other mode, whichever is earlier, deduct Income Tax thereon at the rate of twenty per cent;

Provided that no deduction shall be made under this section 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 aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees.

Explanation: For the purposes of this Section: (1) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii) Where any income is credited to any account whether called "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.

This first portion of Section 194-I read with the proviso imposes an obligation upon a person, who is not an individual or a Hindu undivided family and who pays rent per annum in respect of any premises or property exceeding Rs. 1,20,000 to deduct at the time of payment 20% of the amount paid as rent. Thus this section is not attracted to a case wherein the annual rent whether paid monthly or annually of the premises or property is Rs. 1,20,000 or less than that. In such a case, even if the arrears of rent amount to more than Rs. 1,20,000 this deduction is not attracted. It is also not attracted to a case where the person responsible for paying the rent is an individual or a Hindu undivided family. In the instant case, the person responsible to pay the rent is not an individual or a Hindu undivided family, but it is a Private Limited Company. The annual rent payable is more than Rs. 1,20,000. Thus, the provisions of Section 194-I are attracted to the case on hand from the date it has come into force covering the period from 1st of April, 1994. It is because the definition of the expression "financial year" according to the Act means from 1st April to 31st March in the succeeding year. Therefore, even though Section 194-I has come into effect from 1.6.1994, it covered the rents payable from 1st of April, 1994.

11. The next question for consideration is as to whether the arrears relating to the period prior to 1.4.1994 but paid subsequent to 1.6.1994 are also subject to deduction of 20%. Once it is held that the provisions of Section 194-I are attracted to the case on hand as the annual rent in the instant case exceeds Rs. 1,20,000 and the person responsible to pay the rent is a company and not an individual or a Hindu undivided family, the fact that the payment relates to the period prior to or after 1.4.1994 should not make any difference, because the section directs deduction at the time of payment, which is made subsequent to 1.6.1994. Therefore, 20% deduction shall have to be made even in the arrears of rent, but, such deduction shall not be treated as tax payable by the landlords during the financial year 1994-95, as it is always open to the assessee to file returns apportioning the income received later in respect of previous or earlier financial year. In the event of filing such returns, such deduction will have to be adjusted by the department towards the tax payable by the assessee.

12. One more question that remains for consideration is as to whether the petitioners should be subjected to the proceedings that are now initiated against them by the notice dated 2.9.1994, which is extracted above. We have already extracted the relevant portion of our order dated 2.8.1994 which directed the mode of payment. Further the petitioners/appellants in Contempt Appeal No. 5 of 1994 were required to pay under the teeth of the punishment imposed in the contempt proceedings. Our order did not give any scope or option to the appellants in the contempt appeal to deduct 20% of the amount payable to the respondents at source. In such a situation Proviso to Section 281 of the Act is

attracted at it specifically empowers the concerned assessing officer to extend the benefit to such an assessee and not to treat him as the assessee in default in respect of the tax. On this question also, we have heard the learned Senior Standing Counsel for the Department, who fairly submitted that as the petitioners were obliged to make payment pursuant to the order of this Court, they cannot be treated as defaulters and they would fall within the Proviso to Section 201 of the Act, and the assessing officer would be suitably advised in this regard on an application filed by the petitioners pursuant to the notice dated 2.9.1994. As the case falls under the Proviso to Section 201(1) of the Act, and as the submission of the learned Senior Standing Counsel is also to the same effect, and in addition to this it is also submitted by the learned Senior Standing Counsel that the assessing officer would be advised, accordingly, we do not consider it necessary to issue any such direction as prayed for in this miscellaneous petition as it would be sufficient to place the submissions made by the learned Senior Standing Counsel for the Department on record.

13. For the reasons stated above, the civil miscellaneous petition is disposed of in the following terms: In the facts and circumstances of the case, the petitioners are not liable for their failure to deduct 20% of the amount so far paid, that is, Rs. 16,00,000 (Rs. 10,00,000 + Rs. 3,00,000 + 3,00,000). However, in respect of the amounts to be paid hereafter the petitioners shall deduct 20% of the amount and account the same to the Department as per the provisions of Section 194-I of the Act. It is also made clear that the liability of the respondents to pay the Income Tax continues, even though the petitioners/appellants in the contempt appeal have not deducted 20% of the amount. The petitioners shall also issue the certificate as per Section 203 of the Act and particulars of payment to the respondents.