(2010) 01 BOM CK 0125

In the Bombay High Court

Case No : Execution Application No. 187 of 2004 in Summary Suit No. 3835 of 2003

Madhusudan Shrikrishna APPELLANT

Vs

Emkay Exports and Others RESPONDENT

Date of Decision : 18-01-2010

Acts Referred:
Income Tax Act, 1961 — Section 194A

Citation : (2010) 2 BomCR 38 : (2010) 188 TAXMAN 195

Hon'ble Judges : Kanade V.M., J

Bench : Single Bench

Advocate : N.D. Jaywant, for the Appellant; R.N. Ali, instructed by T. Jariwala and Associates, for the Respondent

Judgement

Kanade V.M., J.—Parties have settled the dispute. A query, however, is raised by the Counsel appearing on behalf of defendants regarding deduction of TDS on the interest component of the decree. Apprehension is expressed by the learned Counsel appearing on behalf of defendants that under the provisions of Section 194A of the Income Tax Act, on the interest component which is payable, tax has to be deducted at source and if it is not so done, the person who does not deduct tax at source on the interest component would be liable for prosecution and penal consequences under the provisions of the Income Tax Act. It is, therefore, submitted that defendants had withheld the payment of the amount which is payable to the Income Tax Department as TDS and a certificate to that effect was also kept ready.

2. Counsel for plaintiff, on the other hand, submitted that since the amount was being paid for discharge of the liability which had accrued in favour of the plaintiff and against the defendants and the said liability had been crystallized by a decree of the Court, defendants were not liable to deduct tax at source.

3. Counsel appearing on behalf of defendants, however, relied upon the judgment of the Apex Court in Lt. Col. K.D. Gupta Vs. Union of India (UOI) and

Others, . Both the Counsel also relied upon the judgment of this Court in Islamic Investment Company Vs. Union of India (UOI) and Another, . Counsel appearing on behalf of defendants invited my attention to paragraph 15 of the said judgment and submitted that the learned Single Judge had granted liberty to the decree holder to apply and get certificate of release from the security or an adjudication from the Income Tax Authority that it is not liable to pay tax in India on the decretal amount or any part thereof.

4. The learned Counsel appearing on behalf of plaintiff, however, submitted that the said observation was made since, in the facts of the said case, plaintiff was a Non Resident Indian. He also invited my attention to para 9 of he said judgment in Islamic Investment Co. (supra).

5. In my view, ratio of the judgment in Lt. Col. K.D. Gupta (supra) would not apply to the facts of the present case. In the said case, decree was passed and the Court had directed that member of Defence Forces should be paid certain amount. Fart of the amount, however, was with held towards deduction of tax at source. Contempt Proceedings, therefore, were initiated. The Apex Court held that no contempt of Court was committed since intention of the payer was not mala fide. The Apex Court, however, observed that the tax due left, was to be decided by the Income Tax Officer. Therefore, in my view, once a decree is passed, it is a judgment and order of the Court which culminates into final decree being passed which has to be discharged only on payment of the amount due under the said decree. The judgment debtor, therefore, cannot, in my view, deduct tax at source since it is an order and direction of the Court and, as such, would not be liable for penal consequences for non-deduction of the tax due. Tax, if payable, can be decided by the Income Tax Officer after the amount is paid to the decree holder. Defendants, therefore, in my view, are not entitled to withhold the payment on the pretext that it has to be deducted as tax at source. Defendants may, therefore, pay the said amount to the plaintiff and for that purpose they would not be liable for non-deduction of tax at source as that issue has to be decided by the Income Tax authorities and if tax is payable the same may be paid by the plaintiff.

6. In view of this order, defendants agree to make payment. Plaintiff is permitted to encash the amount which has been paid by defendants by demand draft after deducting TDS amount which would be paid within two weeks.

7. Stand over for two weeks for final orders on the consent terms.

