(2009) 12 BOM CK 0053

In the Bombay High Court

Case No : Civil Application No. 4923 of 2009 in First Appeal No. 1857 of 2009

Mrs. Gauri Deepak Patel and Others APPELLANT

Vs

New India Assurance Co. Ltd. and Another RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:
Income Tax Act, 1961 — Section 194A(3)
Land Acquisition Act, 1894 — Section 18

Citation : (2011) ACJ 1782 : (2010) 2 ALLMR 176 : (2010) 5 BomCR 249

Hon'ble Judges : S.J. Kathawalla, J;S.A. Bobde, J

Bench : Division Bench

Advocate : M.B. Kotak, for the Appellant; Bhakti Barve, instructed by Arati Barve, Advocatefor Respondent No. 1, for the Respondent

Final Decision : Disposed Off

Judgement

1. The applicants are the widow, two minor children and the mother of the deceased. This Court had directed the respondents to deposit the amount of money awarded to the applicants and has further directed the applicants to withdraw the amount of Rs. 13,00,000/from the amount deposited by the respondents.

2. It appears that the respondent No. 1 called upon the applicants to furnish the pan card and a photo copy since the respondent No. 1 wants to deduct the income tax at source before deposit of decretal amount.

3. Mr. Kotak, the learned Advocate for the applicants has submitted that the applicants are the widow, children and the widow mother of the deceased. They are otherwise not liable to income tax and in any case, the respondents are not entitled to deduction of TDS, since the amount of interest on which the respondent No. 1 wants to deduct TDS, has merged into the award. Mr. Kotak relies on a judgment of this Court in Islamic Investment Company v. Union of India and Ors. 2002 (4) Bom. C. R. 585, where this Court has held that the interest on the decretal amount becomes a part of the Judgment and no

deduction can be made therefrom except such deductions as are permissible under the Civil Procedure Code, 1908. However, this decision shall not apply to the present case since in that case, the decretal amount along with interest had already been paid to the Sheriff of Bombay in execution and had assumed the character of a judgement debt and the Income Tax Act did not provide for the deduction in question in that case. We find that a deduction from an award of the Motor Accidents Claims Tribunal is contemplated by Section 194A(3)(ix) of the Income Tax Act, 1961.

4. Mr. Kotak also relies on a Judgment of Division Bench of the Gujarat High Court in Smt. Hansaguri Prafulchandra Ladhani and Others Vs. The Oriental Insurance Company Ltd. and Others, where the issue arose before the Gujarat High Court pertaining to the interpretation of the provisions of Section 194A(iii)(ix) of the Income Tax Act, 1961, regarding deduction at source of income tax payable on the interest received by the claimant on the compensation received by them pursuant to the Award of the Motor Accident Claims Tribunal. In its said decision, the Gujarat High Court relied on the decision of the Hon''ble Apex Court arising under the Land Acquisition Act, 1894 in Rama Bai and Others Vs. Commissioner of Income Tax, Andhra Pradesh Hyderabad and Others, , wherein the Apex Court has held that interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1894, awarded by the Court on a reference u/s 18 of the Act or on further appeal has to be taken to have accrued not on the date of the order of the Court granting enhanced compensation but as having accrued year after year from the date of delivery of possession of the land till the date of such order and that such interest cannot be assessed to income tax in only lump sum in the year in which the order is made. The Gujarat High Court applied the same principle to interest on compensation awarded by the Motor Accidents Claims Tribunal and observed/held:

The interest on the compensation awarded by the Tribunal or enhanced compensation awarded by the appellate court cannot be taken to have accrued on the date of the award of Tribunal granting compensation or from the date of the award of the appellate court granting enhanced compensation, but has to be taken as having accrued year after year from the date of filing of the claim petition till the date of deposit by the insurance company.

5. The present claim petition was filed some time in the year 2001 and we see no reason why the amount that is sought to be withdrawn today, should be taken to have accrued all at once on the passing of the award and not year to year.

6. Accordingly, we direct that the following procedure as laid down in the case of Hansaguri (supra) shall be followed in the present case and in all the similar cases arising in future before the Motor Accidents Claims Tribunal:

(i) The insurance companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accidents Claims Tribunal shall:

(a) first spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit,

(b) thereafter, if the interest for any particular financial year exceeds Rs. 50,000/, separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of Section 194A(3) to (ix) of the Income Tax Act, 1961. Such amount shall not, however, straightaway be paid over to Income Tax Department,

(c) produce before the Claims Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim application till the date of deposit if the interest for any particular financial year exceeds Rs. 50,000/and also request the Tribunal to treat the amount as a separate deposit.

(ii) The Tribunal shall ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(iii) If the interest payable to any claimant during any particular financial year exceeds Rs. 50,000/, the Tribunal shall permit the insurance companies/owners to pay over the amount liable to be deducted at source u/s 194A(3)(ix) to the Income Tax Department in respect of that particular claimant for the particular year, without prejudice to the claimant''s case that he is not liable to pay any income tax for that year.

(iv) For the financial year(s) for which the interest payable to the concerned claimant does not exceed Rs. 50,000/, the Tribunal may permit such claimant to withdraw the amount deposited as per direction (i)(b) without producing the certificate from the concerned Income Tax authority that there is no Income Tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(v) It is clarified that the amount other than the amount liable to be deducted at source u/s 194A(3)(ix) shall be invested/disbursed by the Tribunal.

(vi) When the claimants make applications before the authority under the Income Tax Act, 1961 for the refund of the amount deducted under the provisions of Section 194A(3) (ix) of the Act, the concerned authority shall decide such applications with utmost expedition.

7. Order Accordingly. The Civil application stands disposed of.