

(2009) 03 DEL CK 0183
In the Delhi High Court
Case No : MAC. APP. No. 596 of 2008

National Insurance Co. Ltd.		APPELLANT
	Vs	
Kanika Saboo and Others		RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Income Tax Act, 1961 — Section 194A, 194A(1), 194A(3)

Citation : (2009) 03 DEL CK 0183

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Pradeep Gaur and Amit Kumar Pandey, for the Appellant; Arvind Dhingra and Pardeep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

J.R. Midha, J.

CMs No. 17078/2008 and 1303/2009 in MAC APP. No. 596/2008

1. The appellant has challenged the award of the learned Tribunal whereby the compensation has been awarded to claimants/respondents. The challenge is on the ground that the driver was not holding a valid driving licence at the time of the accident and, therefore, the Insurance Company is not liable.
2. The appeal is pending for hearing. By an interlocutory order, this Court has directed the Insurance Company to deposit the entire award amount along with interest with the learned Tribunal.
3. The appellant has raised an issue of deduction of TDS from the interest amount.
4. It is submitted by the learned Counsel for the appellant that in all cases of deposit of interest amount exceeding Rs. 50,000/- with learned Tribunal or with this Court in pursuance to an interim order in pending appeals, the appellant is deducting the TDS and is depositing the remaining amount with the learned

Tribunal or with this Court, as the case may be, and the TDS certificate is issued in the name of the learned Tribunal/Registrar General of this Court.

5. The learned Counsel for the claimants/respondents No. 1 to 9 has strongly opposed the deduction of the TDS on the ground that the deposit of interest with the Court under an interim order is not payment of income by way of interest within the meaning of Section 194A of the Income Tax Act, 1961 and, therefore, Section 194A would not apply.

6. Section 194A(1) and (3)(ix) of the Income Tax Act are reproduced hereunder:

Section 194A. (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.

Section 194A(3) - The provisions of Sub-section (1) shall not apply - (ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may, the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.

7. Section 194A(1) has three ingredients which are as under:

(i) There is payment of income by way of interest exceeding Rs. 50,000/-.

(ii) The person making payment is responsible to make the payment.

(iii) The person receiving the payment is entitled to receive payment of income by way of interest.

8. None of the essential requirements of the Section 194A of the Income Tax Act are satisfied in the present case. The reasons are as under:

(i) The deposit of interest amount under the order of this Court pending hearing/ decision of the appeal is not payment of income.

(ii) The appellant is not responsible to make payment of income by way of interest to the Court.

(iii) The Court is not entitled to any payment of income by way of interest from the Appellant.

9. Section 194A(3)(ix) is attracted only to cases where Section 194A(1) is applicable. Since Section 194A(1) is not applicable to the present case, Section 194A(3)(ix) shall also not be attracted.

10. There is another aspect of this matter. The purpose of deduction of TDS is to deduct the tax at source is to identify the income of interest above Rs. 50,000/-

and also deduct tax at source and a TDS certificate is issued to the recipient to enable him to either take adjustment of TDS against his tax liability or to seek refund if his income is below taxable limit. However, the Court is not entitled to receive any payment of income from the appellant and, therefore, if the TDS certificate is issued to the Court, the Court can neither adjust the TDS certificate nor seek the refund against any head. Rather there is no head for deposit of TDS in favour of the Court. At a later stage, if the appeal is decided in favour of the appellant and the money is to be refunded back to the appellant, the appellant cannot even get the refund of the TDS amount. On the other hand, if the appeal is dismissed and the interest amount is released to the claimants, they also cannot get the credit of the TDS. This clearly demonstrates that deduction of TDS by the appellant in the name of the Court and issuance of TDS certificate to the Court is not within the ambit of Section 194A of the Income Tax Act, 1961. It is well settled that if two interpretations are possible then the one interpretation which leads to achieving the object of the provision should be applied.

11. Since the issue involved in this case pertains to the Income Tax, it was considered appropriate to seek the opinion of the Standing Counsel of the Income Tax Department. This Court, therefore, requested the learned Standing Counsel, Mr. Sanjiv Sabharwal to assist this Court.

12. Mr. Sabharwal, the learned Standing Counsel of the Income Tax Department has been apprised of the controversy and he is present in the Court. Mr. Sabharwal submits that the appellant is liable to deduct the TDS u/s 194A of the Income Tax Act in cases where, the payment of any income by way of interest exceeding Rs. 50,000/- is made directly by the appellant to the claimant. The learned Standing Counsel submits that the deposit of interest amount with the Court under the interim direction of the Court pending final determination of the rights in appeal is only a inchoate right and, therefore, Section 194A does not apply and no TDS can be deducted, the learned Standing Counsel refers and relies upon the judgment of Apex Court in the case of Commissioner of Income Tax, West Bengal v. Hindustan Housing and Land Development Trust (1986) 161 (ITR) 425 . The learned Standing Counsel further submits that upon the final decision of the appeal, if the appeal is allowed, then appellant would be entitled to refund of the deposit amount. On the other hand if the appeal is dismissed, the interest amount lying deposited with the Court, would be treated as income and the claimants will be liable to pay the Income Tax and, therefore, in order to protect the interest of the Revenue Department, the Court may send notice to the Income Tax Department before release of the amount and may call for Income Tax Clearance Certificate or deposit of the Income Tax by the claimant with the Income Tax Department.

13. I agree with the opinion of the learned Standing Counsel of the Income Tax Department. I, therefore, hold that Section 194A of the Income Tax Act does not apply to the cases of deposit of interest amount exceeding Rs. 50,000/- by the appellant under interim direction of the Court pending the final determination of

the appeal.