

(2010) 09 MP CK 0004

In the Madhya Pradesh High Court

Case No : Civil Revision No. 58 of 2006

National Insurance Co. Ltd.

APPELLANT

Vs

Smt. Draupadibai

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Income Tax Act, 1961 — Section 194(3)(ix), 194A, 194A(1), 194A(3)(ix), 2(42)

Citation : (2011) 11 TAXMAN 65

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : S.V. Dandwate, for the Appellant; N.K. Maheshwari, R.L. Jain and Ms. Veena Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This Revision Petition u/s 115 of the CPC has been filed against the order dated 4-10-2005 passed by the XII Additional District Judge, Indore (XII Motor Accident Claims Tribunal) in Execution Case No. 4 of 2005. In brief, Shri Onkarsingh, the husband of respondent No. 1, father of respondent Nos. 2 to 4 and son of respondent Nos. 5 and 6 had died in a motor accident on 15-4-2004. The Motor Accident Claims Tribunal had passed the award dated 14-3-2005 in favour of the respondent Nos. 1 to 6 awarding a sum of Rs. 7,85,000 along with 9 per cent interest from the date of application and apportioning the amount of compensation and interest amongst the claimants. The appellant Insurance Company deducted a sum of Rs. 7,917 as TDS (tax deduction at source) u/s 194A of the income tax Act, 1961 (hereinafter referred to as "1961 Act") while depositing the interest amount, therefore, the question about the legality of deduction arose before the Executing Court. The Executing Court by the impugned order held that since the amount of interest payable to each of the claimant is less than Rs. 50,000, therefore, the appellant Insurance Company cannot deduct tax at source u/s 194A of the 1961 Act.

2. Learned counsel appearing for the appellant submitted that the Executing Court has committed an error in interpreting the provisions of section 194A of the 1961 Act and no error was committed by the Insurance Company in deducting the tax at source while depositing the interest amount before the Tribunal.

3. Learned counsel appearing for the respondents-claimants submitted that the order passed by the Executing Court is just and proper and no interference is required by this Court.

4. I have heard the learned counsel for the parties and perused the record.

5. By the award dated 14-3-2005 the Claims Tribunal while awarding the compensation of Rs. 7,85,000 to the respondents-claimants has apportioned the amount of compensation amongst the claimants by awarding Rs. 3,00,000 to respondent No. 1 Draupadi Bai (wife), Rs. 75,000 each to respondent No. 2 Surendra (son) and respondent No. 3 Sushil (son), Rs. 1,35,000 to respondent No. 4 Ku. Shweta (daughter) and Rs. 1,00,000 each to respondent No. 5 Khimmabai (mother) and respondent No. 6 Dojpal (father). The Tribunal awarded interest at the rate of 9 per cent from the date of application on the compensation amount and further directed that the interest amount will be equally payable to the claimants.

6. Section 194A of the 1961 Act deals with the deduction of tax at source on payment of interest other than interest on securities and section 194A(3)(ix) deals with interest on compensation amount awarded by the Motor Accident Claims Tribunal, the relevant extract of which are as under:-

194A. Interest other than "Interest on securities". -(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:-

(2) ****

(3) The provisions of sub-section (1) shall not apply -

(i) to (viii) ****

[(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 be the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees.]

7. u/s 194A(1) the liability to deduct tax on payment of interest arises on making payment of any income by way of interest to a resident. Resident has been

defined u/s 2(42) of the 1961 Act as:-

(42) "resident" means a person who is resident in India within the meaning of section 6;

Under section 6 of the 1961 Act any individual, HUF, company etc. satisfying the conditions mentioned therein is covered within the meaning of resident in India.

8. u/s 194A(1) the deduction of tax at source is permissible while paying income by way of interest to a resident. A combined reading of section 194A, section 2(42) and Section 6 of the 1961 Act makes it clear that each individual claimant in an award of the Tribunal, a resident for the purpose of income tax Act.

9. In a case where the claimants are more than one and the Tribunal has apportioned the compensation amount and the amount payable by way of interest to each of the claimant is ascertainable from the award of the Tribunal, then for the purpose of deducting tax at source u/s 194A the interest income of each of the claimant is to be taken into account separately and the interest income of all the claimants who are separate residents within the meaning of section 2(42) read with section 6 of the 1961 Act, cannot be clubbed together. If such a clubbing is allowed that will not only be contrary to the provisions of Section 194A of 1961 Act but it would also lead to absurd result because in such a case income tax on interest awarded to each of the poor claimant will be deducted though his interest income may not exceed the limit prescribed for TDS and he will have to face the long process of claiming the refund of tax amount deducted at source or to forgo the said amount. It is worth noting that once the compensation amount is apportioned by the Tribunal amongst the claimants and apportionment of the interest is done, then each of the claimant being "a resident" separately becomes entitled to receive ascertained sum awarded to him. The Tribunal in such a case while executing the award only acts as a condute so that the respective claimants can receive the sum awarded to them.

10. In this regard the Circular No. 256 [F. No. 275/17/79-IT, dated 29-5-1979 is relevant which provides that:-

3. The Board are advised that in the case of deposit in joint names, say in two names, in the absence of any proof to the contrary, both the persons can be treated as payees for the purpose of deduction of tax u/s 194A. As such, unless the person paying the interest on such deposit(s) has definite information about the beneficial ownership of the deposit(s), the interest payable under a joint account can be aggregated with the amount of interest payable by that person to any one of the payees in their separate or independent accounts. The persons responsible for deducting the tax or advised that, in the absence of any information to the contrary, they may aggregate the interest on a joint account with the interest on deposit in the individual's account who has higher interest income. Thus, if there is a deposit of Rs. 5,000 in a joint account of XY and there are deposit of Rs. 4,000 in the name of X and Rs. 3,000 in the name of Y with the same payer, the rate of interest being 12 per cent per annum, the payer may

aggregate the interest in the joint account amounting to Rs. 600 with the interest of Rs. 480 on the deposit of X and since the aggregate interest during a financial year exceeds Rs. 1,000 he may deduct the tax at the prescribed rate. The fact that the joint account may be styled as YX instead of XY will not make any difference.

The Circular is in respect of the TDS on deposit in joint name and it provides that if there is definite information about the beneficial ownership of the deposit, the interest payable under a joint account cannot be aggregated. This Circular not only clarifies the position but also makes the intention behind section 194A clear. The view taken by this Court above is supported by this circular.

11. In terms of sub-section 194A(3)(ix) if income covered by section is less than Rs. 50,000, the provisions of sub-section (1) will not apply. The word "such income" in sub-section (3)(ix) refer to the interest income covered by sub-section (1), therefore, a reading of sub-section (1) and sub-section (3)(ix) together makes it clear that it is the interest income of a resident in a financial year which is to be taken into account for calculating the limit of Rs. 50,000. Words "Aggregate of such income" in section 194A(3)(ix) may apply in a case, where interest income is credited or paid to a claimant for more than one claim in a financial year. Thus, section 194A provides for clubbing of all the interest income of "a resident" (claimant) but it would be misreading of the section to hold that it provides for clubbing of interest income of all the claimants for the purpose of calculating the limit of Rs. 50,000 u/s 194(3)(ix), even when interest payable to each claimants is ascertainable.

12. It is however, made clear that the aforesaid interpretation of section 194A of the 1961 Act applies only in cases where the compensation amount has been apportioned and the interest payable to each of the claimants is ascertainable but the position may be different when no such apportionment is done by the Tribunal in the award and interest payable to each claimant separately is not ascertainable at the time of depositing the interest amount before the Tribunal.

13. Coming to the facts of the present case since in the award of the Tribunal the compensation amount and the interest amount have been apportioned between the respondent Nos. 1 to 6 claimants and the interest payable to each of the claimants comes to Rs. 20,208.33 which does not exceed the limit of Rs. 50,000 provided u/s 194A(3)(ix) of the 1961 Act, therefore, the Insurance Company is not entitled to deduct the tax at source while depositing the amount of interest payable to the respondent claimant before the Tribunal. Therefore, I am of the considered opinion that the impugned order passed by the Tribunal does not suffer from any error and there is no merit in the Revision Petition.

The Revision Petition is accordingly dismissed.

No costs.