
(2019) 08 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6419, 6320 Of 2016

National Insurance Company Limited

APPELLANT

Vs

Janki

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Income Tax Act, 1961 — Section 194A, 194(3)(a), 194A(3)(ix), 194A(3)(ixa), 44AB, 56
Motor Vehicles Act, 1988 — Section 171
Land Acquisition Act, 1894 — Section 34

Citation : (2019) 08 P&H CK 0023

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Neeraj Khanna, Yogesh Putney

Judgement

Amol Rattan Singh, J

1. These two revisions have been filed by the National Insurance Company Limited, challenging two orders of the learned Motor Accident Claims Tribunal, Moga, both dated July 20, 2016, passed in two separate execution applications filed by the claimants in whose favour the Tribunal had earlier passed Awards granting them certain compensation.

The challenge is on account of the fact that the Tribunal has directed the petitioner company to deposit tax at source, on the component of interest payable to the claimants pursuant to the Awards in their favour.

The contention of the petitioner is that, in fact, it had already deposited the tax deducted at source, with the income tax authorities; and consequently the direction by the Tribunal, vide the impugned orders, is wholly uncalled for, as the company would therefore be paying the said component of the compensation again.

While issuing the aforesaid direction, the Tribunal had relied upon a judgment of a Division Bench of this court, in Drawing and Disbursing Officer v. Income Tax

Officer (ITA no.495 of 2009), decided on 30.03.2011, with the Tribunal observing in its order that in the said judgment, this court had framed specific issues after referring to various authorities of the Supreme Court, and had thereafter held that the interest component in the compensation awarded by a Motor Accident Claims Tribunal, being a part of compensation so awarded, is to be treated as a capital receipt and not income, till the claimant has actually received the amount.

2. Notice of motion having been issued in both these petitions, as per the report of the Registry, the respondents in CR no.6419 of 2016, i.e. the claimants before the learned Motor Accident Claims Tribunal, stand duly served. However, despite that, they have chosen not to appear and contest the petition.

In CR no.6320 of 2016, the report is to the effect that the claimant has expired. However, her son, Suraj Kumar, is the one who actually submitted her death certificate to the learned District Judge, Moga, (upon a direction from this court, there being some confusion on whether she had died or not).

Obviously therefore, with her son fully aware of the notice issued in the petition, he has still not chosen to appear and contest the case.

3. Before this court, Mr. Neeraj Khanna and Mr. Ravinder Arora, learned counsel appearing for the petitioner company in these two cases, have first referred to Section 194-A of the Income Tax Act, 1961, the relevant extract of which, as amended, reads as follows:-

"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: [Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]

Explanation.- For the purposes of this section where any income by way of interest as aforesaid is credited to any account whether called "Interest payable account" or "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.]

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The provision of sub-section (1) shall not apply-

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[(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa) to such income 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 paid during the financial year does not exceed fifty thousand rupees:]"

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4. Learned counsel thereafter referred to a judgment of a Division Bench of the Bombay High Court in *Gauri Deepak Patel v. New India Assurance Co. Ltd.* 2009 (20) RCR (Civil) 515, wherein it was held that the Tribunal while dealing with cases before it, would spread the interest accruing on the compensation amount, "over to the relevant financial years" and thereafter, if the interest in a particular financial year exceeds Rs.50,000/-, in terms of clause ix (a) of sub-section 3 of Section 194-A, the Tribunal would permit the insurance companies to deduct the tax at source for that particular financial year and pay it to the income tax department.

Learned counsel also relied upon a judgment of a Division Bench of this court in *Gurdev Singh and others v. State of Haryana and another* 2014 (46) RCR (Civil) 453, wherein it was held (in the context of compensation paid for land acquired under the Land Acquisition Act, 1894), that on the interest component, income tax was payable under Section 56 of the Income Tax Act, as income from other sources.

5. On the other hand, of course, is the judgment of another Division Bench of this court (as has been relied upon by the Tribunal), in *Drawing and Disbursing Officers' case* (supra). In that case, the following substantial questions of law had been framed by the appellant before their Lordships:-

"i) Whether interest allowed by the Ld. MACT in accident case on the amount of award can be termed as 'Income from interest' or the same is a part of compensation for the delay caused in legal proceedings?

ii) Whether the department can initiate action afterwards when it has already made the assessment and no infirmity was pointed out at the time of assessment?

iii) Whether an order passed by the court is absolute and has to be complied with in toto?

iv) Whether the Judgment Debtor can make deductions and if so, whether it would amount to contempt of court?

v) Whether interest allowed on compensation amount can be equated with interest earned on Principal amount?

vi) Whether the interest awarded by the MACT is not a part of compensation?"

Having considered the matter in detail, it was held as follows, essentially on questions no.(i) and (vi):-

"29. Section 194A(3)(ix) refers to the provision of receipt of interest after amount has been received by the claimant in pursuance of the award. We are, thus, of the opinion that question of law raised on behalf of the assessee has to be answered in its favour. The view of the Tribunal that interest allowed by the MACT in an accident case was income from interest and, thus, revenue in nature, is not sustainable."

6. What is to be first noticed by this court, as regards the facts of that case, is that, buses belonging to the State of Punjab having met with accidents at various times and compensation having been awarded to the claimants in the context of those accidents, upon payment of which tax was not deducted at source by the State/its agency, notices were issued to it (the State/its Roadways officers), by the income tax authorities.

The Division Bench held, as seen hereinabove, that the interest component on the principal amount of compensation awarded by a Motor Accident Claims Tribunal, is not to be treated as income it being a capital receipt (and not a revenue receipt); and consequently, tax is not to be deducted at source even in the context of clause (ix) of sub-section (3) of Section 194-A of the Act of 1961.

7. In the present cases, the Tribunal, as already noticed, therefore relied upon the aforesaid judgment of this court, and held that the interest component being a part of the compensation awarded, does not attract tax deduction at source, it not being income till the claimant has actually received it (with it to be treated as a capital receipt till that time).

8. In this context, it must be said that, undoubtedly, Section 194-A of the Income Tax Act does stipulate that any person other than an individual or Hindu Undivided Family, who is responsible for paying any income to a resident Indian by way of interest (other than income by way of interest on securities), is liable to deduct tax at source, at the applicable rate. However, the Division Bench of this court in the aforesaid case, observed that the essential question for consideration before it, was whether the interest component has to be treated as taxable income or as a part of the compensation which, being in the nature of a capital receipt, is not taxable.

(Before considering the matter in detail, at the outset itself their Lordships expressed their opinion to the effect that the interest component was a part of the compensation that is not taxable. - Reference paragraph 8 of the judgment downloaded from the website of this court).

This was held to be so after discussing in detail various judgments of the Privy Council, different High Courts, as also the Supreme Court, on the issue of what actually constitutes income, and what does not. The judgments referred to by the Division Bench are enumerated as follows:-

- i) Commissioner of Income Tax, Bengal v. Shaw Wallace and Company AIR 1932 Privy Council 138;
- ii) Rani Amrit Kunwar v. Commissioner of Income Tax, C.P. & U.P. (1946) XIV ITR 561;
- iii) Raghuvanshi Mills Ltd., Bombay v. Commissioner of Income-Tax, Bombay City (1952) XXII ITR 484;
- iv) Raja Bahadur Kamakshya Narain Singh of Ramgarh v. Commissioner of Income-Tax, Bihar and Orissa AIR 1943 Privy Council 153;
- v) Navinchandra Mafatlal, Bombay v. Commissioner of Income Tax, Bombay City AIR 1955 S.C. 58 ;
- vi) The Commissioner of Income-Tax, Hyderabad, Deccan v. M/s Vazir Sultan and sons, AIR 1959 SC 814;
- vii) Navnit Lal C. Javeri v. K.K. Sen AIR 1965 SC 1375;
- viii) Senairam Doongarmall v. Commissioner of Income-Tax, Assam, AIR 1961 SC 1579;
- ix) Sutherland v. Commissioner of Inland Revenue (1918) 12 Tax Case 63; and
- x) CIT v. G. R. Karthikeyan 1993 Supp 3 SCC 222.

9. Thereafter, the Division Bench referred to a judgment of the Supreme Court in Gobald Motor Service Ltd. and another v. R.M.K. Veluswami and others AIR 1962 SC 1, in the context of compensation received under the Motor Vehicles Act (obviously the Act of 1939), to reiterate that interest on compensation awarded by a Motor Accident Claims Tribunal, is by way of a capital receipt and is not income (till such time it is actually received by the claimant before the Tribunal).

10. Having answered that basic question, it was thereafter observed as follows:-

"We may now consider the question whether interest on account of delay in adjudication becomes part of compensation or can be treated as a separate component of income."

Towards consideration of that issue, the court referred to Section 171 of the Motor Vehicles Act, 1988, which reads as follows:-

"171. Award of interest where any claim is allowed: Where any Claim Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

Thereafter, a judgment of the Supreme Court in Commissioner of Income-tax, Faridabad v. Ghanshyam (HUF) (2009) 315 ITR 1 was also referred to, wherein it was found to have been held that interest paid by the Collector under Section 34

of the Land Acquisition Act, 1894, was part of compensation (for acquisition of land) and was treated to be at par with compensation for purposes of taxability.

Another judgment of the Supreme Court, in *Central Bank of India v. Ravindra and others* AIR 2001 (SC) 3095, was also referred to and quoted from.

Lastly, a judgment of the Apex Court, in *Tuticorin Atkali Chemicals and Fertilizers Limited v. Commissioner of Income Tax*, (1997) 227 ITR 172, was also cited by the Division Bench of this court, wherein it was found to have been held that though, ordinarily, interest received is income, however it would not be of 'revenue nature' where it was received by way of damages or compensation.

11. Thus, having referred to the entire case law on the subject, it was held that even in the context of Section 194-A (3) (ix), the tax deductible at source would only be in the context of the amount as has been actually received by the claimant in pursuance of the Award.

Consequently, it was held that the notices issued by the income tax authorities to the State of Punjab/the Drawing & Disbursing Officer of its Roadways, were not sustainable; as interest in such cases was not "revenue in nature" as had been erroneously held by the Income Tax Appellate Tribunal.

12. Before this court, however, Mr. Khanna, learned counsel for the petitioner insurance company, on the other hand has referred to Patels' case (*supra*), of a Division Bench of the Bombay High Court, wherein of course, undoubtedly, it has been held that income tax is deductible at source where the interest component exceeds Rs.50,000/- in any particular financial year. However, what was further held by their Lordships, was that the insurer or the owner of the vehicle (whosoever was to pay the compensation), would spread out the interest amount across relevant years (during which it had accrued), and thereafter determine as to whether in any particular year it had exceeded Rs.50,000/-; and then for that particular year(s), would deposit with the Motor Accident Claims Tribunal, an amount equal to such tax deductible at source. (It has been specifically elaborated by the Division Bench of the Bombay High Court that even such amount would not be paid directly to the income tax authorities, but only deposited with the Motor Accident Claims Tribunal itself, and only for such year where the interest on the compensation exceeds Rs.50,000/- and not simply because more than Rs.50,000/- has been deposited as a lump sum in any particular year to satisfy the Award of that Tribunal).

Thus, as per what was held in that judgment, of course the contention of learned counsel for the petitioner company is correct, to the effect that tax on the interest component is deductible at source by the person that pays the compensation (if it exceeds Rs.50,000/- in any financial year), with obviously the Division Bench of this court holding to the contrary.

13. Consequently, even in the face of what has been held by the Division Bench of the Bombay High Court, I would be bound by the ratio of the judgment of the

Division Bench of this court, (with it further to be noticed again that the Division Bench of this court has gone into great detail by referring to case law on what constitutes income and what does not).

It needs to be also specifically noticed that at the time when that judgment was rendered by this court (on March 30, 2011), clause (ix) of sub-section (3) of Section 194A of the Income Tax Act read as follows (with there being no clause (ixa) at that stage):-

"The provision of sub-section (1) shall not apply-

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(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."

Thus, clause (ix) at that stage also stipulated that tax must be deducted at source even on income by way of interest, at the time of credit or payment thereof, if the amount of such income by way of interest exceeded Rs.50,000/- in a single financial year; (with the said provision obviously being specific to interest accruing on compensation awarded by a Motor Accident Claims Tribunal).

14. Yet, it has been held by a Division Bench of this court, after going into detail on what constitutes income and what does not, that clause (ix) would not be applicable till the time that the interest on compensation has actually been received by the payee, because till that time it would be a capital receipt and not income by way of revenue.

Clause (ixa), subsequently inserted w.e.f. 01.06.2015, postulates that tax would be deductible at source on the interest paid (not credited), on compensation awarded by a Motor Accident Claims Tribunal, if such interest exceeds Rs.50,000/- in a single financial year.

(The original clause (ix) had been inserted in the Income Tax Act with effect from 01.06.2003).

15. Though eventually it would not seem to be making any difference whether the originally inserted clause is read, or the bifurcated clause as inserted later, is read, however, a careful reading of clauses (ix) and (ixa), inserted with effect from 01.06.2015, makes it clear that interest paid up to Rs.50,000/- in a single financial year, on compensation awarded by a Motor Accident Claims Tribunal, is wholly exempt from deduction of tax at source; whereas if the amount or aggregate amount paid in a financial year exceeds Rs.50,000/-, such interest for that financial year would be liable to tax deduction at source.

Thus, in effect, the added clause (ixa) fully clarifies that deduction of tax at source on interest accruing on such compensation, is mandatory if such interest

paid in any particular financial year, exceeds Rs.50,000/-. If, however, it is not actually paid, and only credited, then tax is not deductible at source, (even in terms of clause (ix)) as is also submitted by Mr. Yogesh Putney, Advocate, learned Amicus Curiae.

16. In the present cases, the claim petition that eventually became subject matter of Execution Case no.24 of 27.04.2015 (now subject matter of CR no.6419 of 2016), came to be filed by respondents Baljit Kaur and others, on January 17, 2013, before the Motor Accident Claims Tribunal, with the

Tribunal having made its Award in favour of the claimants on 11.02.2015. Thus, if the judgment of the Division Bench of this court in Drawing & Disbursing Officers' case (supra) is to be strictly followed, as this Bench is bound to do in any case till 01.06.2015, i.e. till the amendment of clause (ix) and insertion of clause (ixa) in Section 194A(3) of the Income Tax Act, 1961, no interest would be deductible at source at all, even if such interest is beyond Rs.50,000/- in a particular year. Hence, honouring the ratio of the said judgment of the Division Bench, no tax would be deductible at source upto 01.06.2015, even if such interest exceeds Rs.50,000/- in the financial year 2014-15, and upto 01.06.2015 in the financial year 2015-16.

17. Therefore, if the petitioner company has paid the interest on compensation to the claimants prior to 01.06.2015, and deposited TDS with the income tax authorities at that time, even where such interest did not exceed Rs.50,000/- in any particular financial year, then such deposit has been made by the company wholly contrary to what has been held by the Division Bench of this court in Drawing & Disbursing Officers' case (supra), (though in my opinion, strictly even in terms unamended clause (ix) of sub-clause (3) of Section 194-A of the Act of 1961, the tax was deductible at source, whether credited or actually paid).

As per applicability of the ratio of that judgment, the claimants cannot be burdened with filing returns seeking a refund, if the fault is that of the company itself (by making an erroneous deduction).

18. Consequently, in view of the aforesaid discussion, these petitions are disposed of with the impugned orders in both petitions set aside.

The matters are remanded to the learned Motor Accident Claims Tribunal, Moga, with a direction that if the interest on compensation was paid prior to 01.06.2015, then the petitioner company would pay the claimants the amount of tax it had deducted at source (and seek refund from the income tax authorities if it so desires, by filing a revised income tax return).

However, on the other hand, if the interest on the compensation awarded was actually paid after 01.06.2015, and such interest was of an amount above Rs.50,000/-, the petitioner company would not be liable to pay to the respondent-claimants, the tax deducted at source and paid to the Income Tax Department.

In such a case, it would be the choice of the respondent-claimants in each of

these petitions, to file an appropriate income tax return for the year concerned, seeking a refund of the tax deducted at source, if such tax/any part thereof, was not actually payable by them on account of them being below taxable thresholds.

The learned Tribunal would consequently pass an appropriate order, upon consideration of the aforesaid facts in each case.

Upon any such returns being filed, either by the insurance company or by the claimants before the income tax authorities, delay in filing such returns/revised returns, shall be condoned by the appropriate authority, the matter having been settled upto this court only today.