(2010) 12 GUJ CK 0113

In the Gujarat High Court

Case No : Special Civil Application No. 14704 and 14726 of 2010

New India Assurance Company Limited APPELLANT

Vs

Commissioner For Workmens Compensation and Others RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 194A, 194A(3)

Citation : (2010) 12 GUJ CK 0113

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; J.B. Pardiwala, for Respondent 1 and P.C. Chaudhari, for Respondents 2 - 4, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Since common issue is involved in both these petitions, they are being heard and disposed of together by this common order.

2. The Petitioner, namely, the New India Assurance Company Limited has filed these two petitions under Article 226 of the Constitution of India, praying for quashing and setting aside the order dated 13th August 2010 passed by the Commissioner for Workmen''s Compensation, Labour Court, Navsari in Distribution Application Nos. 5/2010 and 7/2010 in Workman''s Compensation (Fatal) Case Nos. 2/2006 and 12/2004 respectively.

3. The Petitioner has also prayed for a declaration that the Petitioner, in compliance with the provisions of Section 194A of the Income Tax Act, 1961 (hereinafter referred to as, ''the Act''), is entitled to deduct an amount of Rs. 16,710=00 and Rs. 18,233=00 towards tax from the amount of interest due and payable to the Respondent Nos. 2 and 3 in the first matter and to the Respondent Nos. 2 to 6 in the second matter.

4. For the sake of convenience, the facts are taken from Special Civil Application

No. 14704/2010. The Workman''s Compensation (Fatal) Case No. 2/2006 is filed by the present Respondent Nos. 2 and 3 with the present Respondent No. 1, Commissioner for Workmen''s Compensation, Labour Court, Navsari. The Commissioner for Workmen''s Compensation has awarded a sum of Rs. 3,46,425=00 with interest to the Respondent Nos. 2 and 3 vide his order dated 22nd December 2009. The total amount payable under the award was Rs. 4,82,820=00 which, inter alia, includes the interest of Rs. 1,50,395=00. The Petitioner Insurance Company deducted a sum of Rs. 16,710=00 constituting tax deducted at source (TDS) from the interest amount payable under the award. This was in compliance with the provisions contained in Section 194A of the Act.

5. Being aggrieved by this action of the Petitioner, the Application was filed by the present Respondent Nos. 2 and 3 with the Respondent No. 1 and the Respondent No. 1 i.e. the Commissioner for Workmen''s Compensation, Labour Court, Navsari, passed order on 13th August 2010 allowing the said Application and thereby directing the Petitioner to deposit Rs. 16,710=00 constituting tax deducted at source by the Respondent No. 1 so that the said amount can be paid over to the Respondent Nos. 2 and 3.

6. It is this order of the Commissioner for Workmen''s Compensation, which is under challenge in the present petitions.

7. Mr. Shalin Mehta, the learned advocate appearing for the Petitioner has submitted that the impugned order passed by the Commissioner is absolutely inconsistent and incompatible with Section 194A(3)(ix) of the Act. He has further submitted that while passing the impugned order, the Commissioner has relied upon the order of the Division Bench of this Court made in Civil Application No. 10031/2006 in First Appeal No. 1392/2006 on 4th October 2006 in the case of Smt. Hansaguri Prafulchandra Ladhani and Ors. v. The Oriental Insurance Company Limited and Ors. However, the said decision has no application to the facts of the present case as in the present case the award is passed by the Commissioner under the Workmen''s Compensation Act, 1923, whereas in the case of Hansaguri (supra), the award was passed under the Motor Vehicles Act. He has further submitted that in the case of Hansaguri (supra), the interpretation of Section 194A(3)(ix) of the Income Tax Act, 1961 was taken into consideration and the said section specifically talks about the interest payable on the compensation amount under award passed by the Motor Accident Claims Tribunal and limit of Rs. 50,000=00 is prescribed. In Section 194A(3)(ix) of the Act, specific exception is carved out in respect of interest upto Rs. 50,000=00 on compensation under an award of MACT, however, no such exception is carved out so far as the payment of interest on the compensation awarded under the Workmen''s Compensation Act is concerned. He has, therefore, submitted that the impugned order passed by the Commissioner deserves to be quashed and set-aside.

8. Mr.P.C. Chaudhari, the learned advocate appearing for the Respondent No. 2 in Special Civil Application No. 14726/2010 has submitted that the interest received

on the compensation by the claimant should also be treated at par with the interest received under the compensation awarded by the Motor Accident Claims Tribunal and, hence, the Petitioner should not have deducted any amount of tax at source. He has further submitted that the claimants are not liable to pay any tax as they are not income tax payers and, hence, the entire amount with interest should have been paid to them without deduction of any tax.

9. Having heard learned advocates appearing for the parties and having considered the facts and submissions in the matter, the Court is of the view that the reliance placed on the Division Bench judgment of this Court in the case of Hansaguri (supra) is absolutely unjustifiable as the section does not talk about the interest on compensation awarded under the Workmen''s Compensation Act. Moreover, this very issue has come up before this Court in the case of New India Assurance Company Limited v. Commissioner for Workmen''s Compensation, Labour Court and others in Special Civil Application No. 13923/2008 decided on 5th August 2010 wherein, after quoting the provisions of Section 194A of the Income Tax Act, 1961, the Court held that the Insurance Company was justified in deducting the tax at source. The Commissioner for Workmen''s Compensation should not have directed the Petitioner to deposit the amount of tax deducted at source as the Petitioner had already deducted the said tax in due compliance with the provisions contained in Section 194A of the Act. If the claimants are not liable to pay the income tax, they can certainly claim refund from the Income Tax department by filing refund claim with the Income Tax department. On the contrary, if the Petitioner would not deduct the tax, in that case, it would be liable to face penalty and prosecution under the Income Tax Act. This Court is, therefore, of the view that the Commissioner for Workmen''s Compensation, Labour Court, has erred in directing the Petitioner to deposit the amount of tax deducted at source. Such a direction is contrary to the provisions of Section 194A of the Act. Hence, the Commissioner for Workmen''s Compensation should not have issued such directions when the Insurance Company itself is deducting tax in due compliance with the provisions of the Income Tax Act.

10. With these directions and observations, both these petitions are accordingly allowed and the impugned orders passed by the Commissioner for Workmen''s Compensation, Labour Court, Navsari, are hereby quashed and set-aside. There shall be no order as to cost.