

(2010) 12 SHI CK 0195
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 386 of 2010

Oriental Insurance Company Ltd.

APPELLANT

Vs

Viyasan Devi and Others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Income Tax Act, 1961 — Section 194(A)

Citation : (2010) 12 SHI CK 0195

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition is directed against the order dated 17.5.2010 passed by the learned Motor Accident Claims Tribunal-II, Una.

2. The question which has been raised in this petition is whether the Insurance Company is entitled to deduct tax at source (TDS) on account of payments made under the Motor Vehicles Act. The learned Tribunal has passed a cryptic order, which reads as follows:

The case is listed for proper orders today. Heard. I have also gone through the case file. Since the TDS has been deducted against the provisions of Section 194(A) of the income tax Act by the JD/Insurance Company, it is directed to deposit the said amount in this Tribunal so that it can be paid to the DH/ Petitioner on or before the next date of hearing. Now put up for further orders on 22.6.2010.

3. A bare reading of the order shows that the learned Tribunal has not even referred to the provisions of Section 194(A) and has made a sweeping statement that the said section is not applicable. This shows total non application of mind on behalf of the Tribunal. It is expected that Tribunals while deciding legal issues, at least, go through the bare provisions of the Act before giving their findings.

4. Section 194(A) of the income tax Act provides that when any person, not being individual or HUF, pays any income by way of interest other than income by way of interest on securities such person shall at the time of credit of income to the account of the payee deduct income tax thereon at the applicable rates. There are certain exceptions provided in the section itself and we are concerned with Clause (ix) of Sub-Section 3, which exempts interest income credited by way of interest on the compensation amount awarded by the learned Motor Accident Claims Tribunal where the amount of such income does not exceed Rs. 50,000/- in a financial year.

Relevant portion of Section 194A reads as follows:

194A. 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 cheques or draft or by any other mode whichever is earlier, deduct income tax thereon at the rates in force:

xxx.. xxx... xxx... xxx....

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

xxx.. xxx... xxx... xxx....

(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.

5. It is thus obvious that under the income tax Act, TDS has to be deducted on interest income accruing even on payments deposited under the Motor Vehicles Act when such interest income exceeds Rs. 50,000/-.

6. The question which arises is whether the income of each of the claimants by way of interest from the compensation exceeds Rs. 50,000/- or not. The operative portion of the Award of the Tribunal reads as follows:

In view of my findings arrived at hereinabove supra, I allow the claim petition with costs and the Petitioners are held entitled to compensation amounting to Rs. 91,14,000/-alongwith interest at the rate of 7.5% per annum from the date of filing of the petition till realization thereof initially to be paid by the Respondent No. 3 insurance company, however, the insurance company shall be at liberty to recover the entire amount from the owner of the vehicle by filing an execution petition under the provisions of the M.V. Act itself, without taking recourse to any other legal proceedings. The amount of award shall be apportioned in the following manner. The Petitioner No. 1 Smt. Viyasan Devi (wife of the deceased) shall be entitled to Rs. 5,01,400/- alongwith proportionate interest and Petitioner

No. 2 Phoolan Devi (mother) 5, Mohinder Kumar, 6 Saroj Kumari and Petitioner No. 7 Seema Devi (son & daughters) and mother of the deceased) shall be entitled to Rs. 1 lac each, alongwith proportionate interest. Since Petitioner 3 Ashok Kumar and Petitioner 4 Munish Kumar are government servants hence they were not dependent on the deceased hence are held not entitled to any compensation. The amount awarded to the Petitioners No. 5 to 7 shall however be kept in fixed deposit initially for a period of three years with some nationalized bank at Una. This amount of compensation after adjustment of the interim compensation, if any shall be paid to the Petitioners. The memo of costs be prepared. The file after due completion be consigned to record room.

7. It is thus apparent that Petitioner No. 1-claimant Smt. Viyasan Devi, widow of the deceased was held entitled to Rs. 5, 01,400/- and interest @ 7.5% per annum which would work out to Rs. 37,605/-per annum only, which is less than Rs. 50,000/-. As far as claimants No. 2, 5, 6 and 7 are concerned, they have only been awarded Rs. 1 lakh each and annual interest thereupon shall only work out to Rs. 7500/-.

8. While deducting tax at source it has to be deducted in respect of the income being derived by a person. All the claimants cannot be clubbed together and the income of each claimants will have to be individually assessed because each claimant would be a separate person within the meaning of the Income Tax Act. It is made clear that nothing is being said about minor(s) in this case since that issue does not arise in this case. A bare reading of Section 194 clearly shows that the duty to deduct tax at source in terms of Section 194(A)(ix) will arise only when the aggregate interest income of "a person" exceeds Rs. 50,000/-. If it is Rs. 50,000/- or less, then no tax is to be deducted at source. Merely because the claimants have joined together to file a claim petition does not mean that the entire interest payable on the compensation is to be taken into consideration. Before making deduction, the Insurance Company must verify what is the interest income of each individual-claimant and accordingly deduct tax at source.

9. Keeping in view the aforesaid discussion, the petition filed by the Insurance Company is dismissed though on totally different grounds. The Insurance Company shall deposit the amount of tax deducted at source with the Motor Accident Claims Tribunal. It is, however, made clear that on production of this order the insurance company shall be entitled to obtain refund of the tax deposited with the tax authorities, as per certificate Annexure P-2. Petition is disposed of accordingly. Copy of this judgment be circulated to all the Nationalized Insurance Companies and Motor Accident Claims Tribunals in the State.