
(2014) 09 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

R. MUTHUKRISHNAN

APPELLANT

Vs

Manager, Canara Bank, Nri Branch

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 632 : 2014 4 CPJ 207

Hon'ble Judges : D.K.JAIN , VINAY KUMAR J.

Advocate : RAKESH PATHAK

Judgement

1. IN this Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short ""the Act ""), preferred by the Complainant, the short question for consideration is: whether both the Forums below were correct in holding that there was no deficiency in service on the part of the Respondent Bank in deducting, a sum of Rs.1,301/ -, as Income tax at source at the time of renewal of Resident Foreign Currency (RFC) deposits?

2. SHORN of unnecessary details, the material facts giving rise to the aforesaid controversy are that during the year 2003, the Petitioner/ Complainant, a practicing Advocate, had made four RFC deposits with the Respondent in the status of and in the capacity as ""Resident but not Ordinarily Resident "". The deposits were renewed periodically upto the year 2005. On maturity, the bank deducted a sum of Rs.1,301/ -, equivalent of US\$16.64 +GBP 6.30, in spite of the Petitioner requesting them not to deduct Income -tax, on the plea that being a non -resident, interest payable to him on these deposits did not form part of his total income in terms of Section 10 (15) (fa) of the Income Tax Act, 1961. The Petitioner 's demand for refund of the said amount having been declined by the Bank, alleging deficiency in service, the Petitioner filed a complaint under the Act before the District Consumer Disputes Redressal Forum, Chennai (South) (for short the ""the District Forum ""), inter -alia, praying for a direction to the Bank for refund of the said amount along with compensation of Rs.90,000/ -.

3. THE complaint was resisted by the Respondent on the ground that as per

Section 6(6) of the Income Tax Act, 1961, as it existed at the relevant time, a person who has come back to India from abroad for permanent settlement can retain the status of "Not ordinarily Resident" in India only for a period of 2 years commencing from "the financial year in which such person returned to India" and therefore, the Petitioner could not claim the benefit of exemption from payment of Income Tax beyond the financial year 2003 -04. Accepting the stand of the Bank, the District Forum dismissed the Complaint on the ground that in deducting tax at source, the Bank had discharged a statutory duty and therefore, there was no deficiency in service on their part. The Petitioner's Appeal having been dismissed by the State Commission, he is before us in this Petition. It is strenuously submitted by the Petitioner that since the Bank was intimated by him vide letters dated 30.01.2005 and 26.02.2005, i.e. before the end of the previous year 2005 -2006, not to deduct Income Tax at the time of the renewal of the RFC deposits, the Bank acted negligently and arbitrarily in deducting the tax and thus, leading to and resulting in deficiency in service on its part.

4. IN our opinion, for the reasons stated herein below, there is no substance in this Petition.

5. CLAUSE (o) of Section 2(1) of the Act defines "service" to mean service of any description, which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Section 2(1)(g) defines "deficiency" to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

6. IT is true that the language employed in both the provisions indicates that the scope and width of both the clauses is very wide but at the same time no single test can be laid down as decisive in the determination of the extent of fault, imperfection, nature and the manner of performance, etc. as stipulated in clause (g) required to be maintained by any of the sectors, mentioned in clause (o). It must depend on the fact of a particular case, having regard to the nature of the "service" provided. (See: Managing Director, Maharashtra State Financial Corporation & Ors. Vs. Sanjay Shankar Mamarde (2010) 7 SCC 489.

7. AT this juncture, it would be apposite to refer to the decision of the Hon'ble Supreme Court in Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines & Anr. (2000) 1 SCC 66, wherein, while explaining the scope of the expression "deficiency in service", it has been observed that the deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which, a person is required to perform in

pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission, attributable to the respondent, which otherwise do not amount to deficiency in service. It is stated that in case of a bonafidedispute, no willful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be inferred. If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. It is reiterated that if the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act.

8. TESTED on the touchstone of the aforementioned broad principles, we are of the view that the Petitioner has failed to establish any willful default or action on the part of the Bank in deducting Tax at source. Under Section 193 of the Income Tax Act, 1961, the Bank was obliged to deduct Income Tax at the time of renewal of the said deposits. Failure to do so could invite a penal action against it. It is true that the Petitioner did instruct the Bank not to deduct tax as, according to him, he was entitled to the benefit of Section 10 (15) (fa) of the Income Tax Act, 1961 but the Bank, on its interpretation of Section 6(6) of the said Act, thought it advisable to deduct the tax, which in any case the Petitioner could take credit of or claim refund at the time of filing his Return of Income for the Assessment year 2005 -2006, as the case may be. A mere inconvenience does not amount to deficiency in service, entitling compensation under the Act. We are not persuaded to read any malafides in the conduct of the Bank, as alleged by the Petitioner. In our view, the Petitioner has, on facts, failed to establish any willful fault on the part of the Bank. We do not find any illegality or material irregularity in the impugned order, warranting our interference in the Revisional jurisdiction. Resultantly, the Revision Petition is dismissed.