
(1996) 03 CAL CK 0043
In the Calcutta High Court
Case No : C.O. No. 20420 (W) of 1995

Smt. Bishaka Sarkar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-03-1996

Acts Referred:

Income Tax Act, 1961 — Section 194I

Citation : (1996) 134 CTR 558 : (1996) 219 ITR 327

Hon'ble Judges : B.M. Mitra, J

Bench : Single Bench

Advocate : Partha Pratin Mukherjee and S.G. Mukherjee, for the Appellant;
Rupendra Nath Mitra and Soumitra Pal for respondent No. 1 and Ambar
Majumdar and Bidyut Kumar Banerjee, for the Respondent

Judgement

B.M. Mitra, J.—In this writ proceeding a challenge is thrown with regard to the move initiated by a branch of Bank of India, a Government of India undertaking, for its deduction of the rent payable to the landlord at the rate of 20 per cent. as per the provisions of Section 194I of the Income Tax Act, 1961, as amended for the month of June, 1994. The admitted position is that the tenancy stood in the name of Bank of India on the date under four sets of landlords at a monthly rental of Rs. 27,050 payable according to the English calendar month. On total computation of the monthly rent, the actual amount is within the ceiling for which the provisions of Section 194-I of the Income Tax Act are required to be attracted. As delineated above, the tenancy stood in the name of four persons which can be ascribed in law as a tenancy-in-common. The term "rent" has been attempted to be defined in the Section itself and by way of Explanation superadded to Section 194-I, the term "rent" has been defined as "any payment, by whatever name called, under any lease, Sub-lease, tenancy or any other agreement or arrangement for the use of any land or building (including factory building), together with furniture, fittings and the land appertaining thereto, whether or not such building is owned by the payee". The definition for the purpose of this Act of the nomenclature rent as expounded in the Explanation

column of the section itself, amply reveals that the same is projected as the generic term which includes within the ambit of payment made on whatsoever account for occupation of a tenanted portion. After taking into account the definition of rent, it apparently appears to be a composite concept. Once the rent is comprehended as a composite concept then it is not capable of being fragmented. The moment any attempt will be made to have the germane expression fragmented by splitting up the amount covered by the rent, it will cease to be rent and the same will not satisfy the test of the definition. The rent so far as payable by the tenant in question being a composite amount, the tenant is required to pay the amount in terms of its entirety which is a consideration for occupation by the tenant and/or occupiers of the premises or some portion appurtenant thereto. In the back-drop of the same, the controversy as emerged, in view of the provisions incorporated in Section 194-I which contemplates that liability is on the person responsible for paying to any person by way of rent and that is a statutory responsibility so far as a person is responsible for payment and the person, if not fulfilling the responsibility, the said person may attract and/or invite the penal consequences. It is comprehended in the section itself that the person who is responsible for such payment to the landlord for his occupation, is required to deduct at source 15 per cent. if the payee is (a) an individual or a Hindu undivided family, and (b) 20 per cent. in other cases. Therefore, there is no disproportionate apportionment of the liability of the person responsible for payment to deduct and lower rate of deduction, namely, 15 per cent. is applicable only to the case of an individual and the expression used in the statute is in the singular. There is another alternative which is applicable in the case of a Hindu undivided family. Here, so far as the landlords are concerned, they are stated to have entered into a partition amongst themselves. Nevertheless the landlord remains common, namely, four in number. Therefore, the landlords here are taken as a composite congregation of four persons taken collectively together which do neither satisfy the test of a lone individual nor a Hindu undivided family. In terms of the provisions contained in the section itself, 20 per cent. deduction at source is liable to be attracted in other cases making no specification about it. Here, the other cases may be treated to be omnibus in nature which may mean in "other cases" other than that of an individual and/or a Hindu undivided family. In that case, the liability will be for 20 per cent. Here, in this case, the admitted position is that it is a tenancy-in-common standing in the name of four landlords jointly and the said corpus of an amalgam of the entity constituted of four in numbers being rated as individual landlords do not constitute the definition of individual nor a Hindu undivided family. The said congregation of four persons may come within the pale of the ambit of "other cases" as contemplated in terms of Clause (b) of Section 194-I of the Income Tax Act. Then, in that view of the matter, the person who is a tenant in occupation being a bank, which is a Government of India undertaking, is neither an individual nor a Hindu undivided family and as such the bank is squarely saddled with the responsibility of deduction at source and for remittance of the deducted amount to the Income Tax authorities as

otherwise it will attract the penal consequences. The bank appears to be in a fix because of the stand taken by the writ petitioner and in view of the controversy that has arisen it appears that the cloud of such controversy may be clarified this court treats conglomeration of four persons as common within the other cases other than that of an individual or a Hindu undivided family and then in that case the bank will be required to deduct 20 per cent. at source in order to perform its statutory obligation by way of remittance of the deducted amount. Thereafter it is for the group of landlords to deal with the matter with the Income Tax Department with which the bank has no concern. Therefore, this court feels and holds that the bank authorities are right in taking up their stand by invoking the provisions of Section 194-I of the Income Tax Act by deducting 20 per cent. at source from the rent due and payable to be remitted to the Income Tax authorities.

2. In view of the discussions made hereinbefore and the reasons as delineated above, this court feels that there can be no warrant for issuance of any writ of whatsoever nature upon the concerned bank prohibiting it from deducting at the rate of 20 per cent. from the amount of rent at source. Therefore, in view of my considered opinion, the writ petition should fail and it stands "dismissed on contest.

3. The Department concerned is directed to supply certified xerox copy of this order, if applied for, as early as possible.