
(2003) 08 UK CK 0019
In the Uttarakhand High Court
Case No : C.R. No. 25 of 2002

State of Uttaranchal	Vs	APPELLANT
Amanullah Khan and Others		RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Citation : AIR 2005 Utt 6 : (2005) 3 UC 1783

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : B.S. Verma, for the Appellant; Alok Singh, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—The present revision has been filed against the order dated 29-11-2001 passed by the Additional District Judge, Roorkee. The facts giving rise to the present revision are that execution proceedings in pursuance of Acquisition Case No. 202 of 1989 were initiated by the decree-holder for the recovery of a sum of 19,00,665.10 along with 15% interest.

2. The execution was registered on 1-12-1998. The objections were filed stating therein that no decretal amount is due and instead of that he is entitled to get a sum of Rs. 6,27,853.09 from the decree-holder and as such the execution application is liable to be dismissed.

3. The learned Additional District Judge after considering the arguments has come to the conclusion that a sum of Rs. 11,08,631.06 is due towards execution of the decree. The learned Additional District Judge has also passed the order directing the judgment-debtor for deduction of tax at source.

4. I have heard the learned counsel for the revisionist Sri B.S. Verma and learned counsel for the respondent Sri Alok Singh at great length.

5. The present revision has been filed challenging the order on the ground that the order in question is a cryptic and non-speaking order and as such the same

is liable to be quashed.

6. After hearing both the parties in my opinion the revisionist has challenged the order only on the limited grounds regarding the liability of deduction of Income Tax on the source and further that the amount of Rs. 11,08,631.06 is not payable to the decree-holder.

7. Both the parties have not disputed regarding payment of decretal amount to the extent of Rs. 11,08,631.06. So far as the provision of interest other than "Interest on securities". It shall be deducted at the rate in force. Relevant Section 194A of the Income Tax Act, is quoted below :

"194-A. (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."

8. According to the counsel for the applicant the Court below has not specified as to what amount of tax deduction has to be made. Admittedly the amount which is payable to the decree-holder is Rs. 11,08,631.06 but the deduction of interest at source has not being specified.

9. Counsel for the respondent has also stated that the executing Court should have decided the actual amount due towards the T.D.S. and the rest of the amount payable to the decree-holder. So far as the controversy with regard to the deduction of tax at source on the payment of interest on the enhanced compensation on the enhanced compensation under Land Acquisition Act, it is fully covered u/s 194A of the Act.

10. A bear perusal of Section 194A provides interest other than "interest on securities" at the time of credit of such income to the account of the payee by any mode the Income Tax shall be deducted thereon at the rate in force.

11. The revisionist in his grounds of revision has not challenged the payment of Rs. 11,08,631.00 to the opposite parties the question with regard to deduction of tax on interest has also not been challenged. In any view of the matter it is settled proposition of law that the executing Court cannot go behind the decree. However, the challenge is only with regard to the decretal amount after deduction of T.D.S. Paragraphs No. 5 and 6 In the memo of revision reads as under :

5. Because the Court below failed to appreciate that if tax deducted at source is taken into account towards satisfaction of the decree, the Revisionist is not liable to pay anything to the decree-holder.

6. Because the trial Court accepted that the opposite parties were liable to pay Income Tax on the amount and yet recorded a finding that the opposite parties is entitled to receive Rupees 11,08,631.06 which is against the calculation table.

12. The dispute is, therefore, only limited to the deduction of tax on the interest amount and the question of entitlement of Rs. 11,08,631.06 is not in dispute and it is for the Tax Department to deduct the same in accordance with the provisions of Deduction of Tax at Source. The revisional Court has rightly passed the following order :-

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13. In view of the aforesaid no interference is required u/s 115, C.P.C. The revision is, therefore, dismissed.

14. However, in the interest of justice both the parties have agreed that the executing Court may be directed to ascertain the amount of payment to the decree-holder after deducting the tax at source in accordance with the Act and receipt for same may be brought on record of the execution proceedings. The applicant shall be at liberty to give to the executing Court data regarding the payment of dues after deduction of tax.