

(2016) 11 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 1770 of 2015

The New India Assurance Co. Ltd.

APPELLANT

Vs

Hussain Babulal Shaikh

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 145A, Section 194A(3), Section 56

Citation : (2017) AAC 462 : (2017) 1 ACC 788 : (2017) 1 AIRBomR 132 :
(2017) 2 ALLMR 21 : (2017) 2 MhLJ 393 : (2017) 1 TAC 400

Hon'ble Judges : G.S. Kulkarni, J.

Bench : Single Bench

Advocate : Mr. Devendranath S. Joshi, Advocate, for the Petitioner; Mr. Suresh Kumar, Advocate, for the Respondent No. 3/Union of India; Mr. Samir A. Vaidya, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J. - The Petitioner ? New India Assurance Company Limited has filed this petition challenging the order dated 21 November 2014 passed by the learned member of the Maharashtra Accident Claims Tribunal, Mumbai (for short "the Tribunal") whereby an application of Respondent No. 1 for issuance of warrant of attachment against the Petitioner in execution of an award, for not depositing part of the award amount, on the ground that the same has been deducted as "tax deducted at source" (TDS), stands allowed.

2. Respondent No. 1 is the original claimant who sustained injuries in a motor vehicle accident occurred on 17 October 2005. The Respondent No. 1 had filed Claim Application No. 1178 of 2006, claiming compensation of Rs.50,00,000/- from Respondent No. 2 and the Petitioner-Insurer. The learned member of the Tribunal by his judgment and order dated 30 July 2012 awarded compensation of Rs.3,43,000/- inclusive of no fault liability amount together with the simple interest at the rate of 7.5% per annum from the date of filing of the claim

petition till realisation of the said amount.

3. The case of the Petitioner is that it has satisfied the Award of the Tribunal by depositing a cheque of an amount of Rs.3,23,502/- towards the principal amount, after adjusting no fault liability amount already paid and Rs.1,26,918/- towards the interest part, after deducting of tax at source (TDS) as per the provisions of Section 194A(3)(ix) of the Income Tax Act,1961. The TDS amount is already deposited with the Income Tax Authority and the TDS certificate in the form No. 16A is produced before the Tribunal.

4. The Respondent No. 1 would contend before the Tribunal that the Petitioner could not have deducted tax at source but ought to have deposited the full award amount. Respondent No. 1 being aggrieved by this action of the Petitioner thus moved Execution Application No. 38 of 2013 praying for issuance of warrant of attachment against the Petitioner. According to Respondent No. 1, the Petitioner has defaulted in depositing the full amount as per the Award by wrongly deducting TDS of Rs.40,034/- which was the balance amount liable to be paid by the Petitioner.

5. The Petitioner resisted the execution application inter alia contending that there is no liability to deposit the said amount, inasmuch as the Petitioner was under a legal obligation to deduct the TDS as per the provisions of the Income Tax,1961 and the same is deposited with the income tax authorities. It is stated that the TDS amount on interest paid as was deposited with the Income Tax department, the Petitioner is not liable to pay any amount to Respondent No. 1. The Petitioner produced a TDS certificate and contended that in view of the TDS certificate, Respondent No. 1 can approach the Income Tax Authorities if so permissible and make a claim for the said amount.

6. The learned member of the Tribunal relying on the decision of the Division Bench of this Court in "Gauri Deepak Patel & Ors. v. New India Assurance Co. Ltd. & Anr.", 2011 ACJ 1782 observed that the Petitioner has not followed the guidelines as contained in the decision for depositing the TDS amount. It is observed that the Petitioner having knowledge of the provisions of the Income Tax Act and the law laid down by the Division Bench ought not to have deducted a lumpsum TDS and deposited the same with the Income Tax department. It was observed that the Petitioner by deducting the TDS amount has actually deprived Respondent No. 1 from receiving the award amount, and as the Petitioner was not ready to deposit the amount, warrant of attachment was directed to be issued by passing the following order:

" ORDER

Application is allowed.

Issue attachment warrant under Order 21, Rule 43 of CPC on process fee for attachment of three computers in the office of the insurance company. If the insurance company deposited the amount before issuance of attachment warrant

then the warrant be stayed."

7. On the above conspectus, learned Counsel for the Petitioner submits that the action of the Petitioner in depositing the TDS amount was legal and valid in view of the provisions of Sections 194A(3)(ix), 145A and 56(2)(viii) of the Income Tax Act, 1961. It is submitted that the decision of the Division Bench of this Court in *Gauri Deepak Patel & Ors.*(supra) relied on behalf of Respondent No.1 and referred in the impugned order, is clearly distinguishable, as it does not take into consideration the said three provisions of the Income Tax Act which are required to be read conjointly. It is submitted that even in terms of clause (vi) of the directions of the Division Bench in *Gauri Deepak Patel & Ors.*(supra), Respondent No.1 can claim refund from the Income Tax Authorities. It is submitted that the effect of the impugned order is that the Petitioner is again made to pay the said amount to Respondent No. 1, when the amount is already deposited with the Income Tax Department. This would amount to double payment. It is thus contended that the Petitioner has rightly deducted the TDS and deposited the sum with the Income Tax department in the name of Respondent No. 1.

8. As regards the application of the above provisions of the Income Tax Act, learned Counsel for the Petitioner would submit that on a conjoint reading of these provisions, following interpretation is available: (a) The interest on compensation granted by MACT is chargeable to tax in the year in which it is received by the Assessee-claimant in terms of Sections 145A(b) & 56(2)(viii) of Income Tax Act.; (b) As per Section 194A(3)(ix), the person making payment of interest on compensation granted by MACT is liable to deduct tax at prescribed rates at the time of Credit (Book Entry) or payment (Actual) if interest exceeds Rs.50,000/- per claimant. The provision nowhere requires bifurcation of interest part over the years. It requires deduction of TDS only at the time of Book Entry or Actual Payment.; (c) Looking from another angle, the interest part cannot be determined unless the Award is passed by the Tribunal hence there is no question of its bifurcation over the years by the deductor for the period necessarily prior to passing of Award; (d) Section 194A has to be considered from the point of view of Deductor and not Assessee. It cannot be seen whether the Assessee is liable to pay tax or not.; (e) The Assessee-Claimant can always claim refund of amount from Income Tax department if he is not liable to pay tax.

9. In support of his submissions, the learned Counsel for the Petitioner has relied on the decision of "*The New India Assurance Co. Ltd. v. Mani S. Nachimuthu, N.*", 2004 (270) ITR 394 Mad, decision of the Supreme Court in the case of "*Bikram Singh & Ors. v. Land Acquisition Collector*" (1997)10 SCC 243 and the decision of the learned Single Judge of Andhra Pradesh High Court in the case of "*The National Insurance Company Ltd. v. Yeliminti Appanna & Anr.*" Civil Revn. Petition No. 994/12 decided on 22.4.2014.

10. On the other hand, the learned Counsel for Respondent No.1 has supported the impugned order of the Tribunal principally on the ground that the impugned order is in consonance with the decision of this Court in *Gauri Deepak Patel &*

Ors. (supra) and the decision of the Gujarat High Court in the case "New India Assurance Co. Ltd. v. Bhoyabhai Haribhai Bhavvad", (2016) 72 Taxmann.com 335 (Gujarat). It is submitted that the Petitioner had completely overlooked the binding mandate of the directions as contained in the decision of the Division Bench of this Court in Gauri Deepak Patel & Ors. (supra). It is submitted that the TDS ought not to have been deducted from the Award amount inasmuch as such deduction as made by the Petitioner is clearly impermissible under Section 194A of the Act as observed by the Division Bench. It is submitted that the Division Bench has interpreted Section 194A(3)(ix) of the Income Tax Act and has laid down a detailed guidelines to be followed by the Insurance Companies for deduction of TDS in payment of the award amount, and the effect is that the award amount stands reduced. It is submitted that the Petitioner who is a accident victim cannot be in a situation where he is required to again pursue proceedings with the Income Tax Authorities in raising a claim of the TDS amount. Such intention cannot be gathered from the provisions of the Motor Vehicles Act. In support of his submission, the learned Counsel has also placed reliance on the judgment of the learned Single Judge of Madras High Court in the case "Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Bharathipuram, Dharmapuri v. Chinnadurai", (2016)5 MLJ 105.

11. I have heard the learned Counsel for the parties. With their assistance, I have also perused the impugned order, relevant documents as placed in the paper book as also the various decisions as relied on behalf of the parties.

12. The issue which falls for consideration of the Court is "whether the Petitioner would be justified in deducting tax at source (TDS) in respect of the interest payment made under the award of the Tribunal." It would be appropriate to consider the relevant provisions of the Income Tax under which the Petitioner has deducted TDS in payment of the interest component under the Award. The case of the Petitioner is that it has acted under Section 194A(3)(ix) of the Income Tax Act. The said provision reads thus:

" Section 194A

(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:

(2) ?..

(3) The provisions of subsection (1) shall not apply(

(i) to (viii) ? ? . ?.

(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 paid during the financial year does not exceed fifty thousand rupees.

(emphasis supplied)

A plain reading of the above provision would indicate that when any person not being an individual or Hindu undivided family who becomes 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. Subsection (3) excludes the application of subsection (1) and sub-clause (ix) thereof and provides that the provisions of subsection (1) shall not apply to such income credited or paid by way of interest on the compensation awarded by the Motor Accident Claims Tribunal, where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed Rs.50,000/-. Thus for exemption from the provisions of subsection (1) of Section 194A, the requirement is that such income paid by way of interest on the compensation amount awarded by the Tribunal will not be liable for tax if the aggregate amount of such interest income paid during the financial year does not exceed Rs.50,000/-. In view of this clear stipulation, the contention as urged on behalf of the Petitioner if is accepted, then, the provisions of Section 194A(3)(ix) would be rendered meaningless which categorically provides that for application of subsection (1) such interest income paid during the financial year should exceed Rs.50,000/-. The Division Bench of this Court in the case of Gauri Deepak Patel & Ors.(supra) has accepted the interpretation of Section 194A as laid down in the decision of the Gujarat High Court in the case of "Smt. Hansagauri Prafulchandra Ladhani v. Oriental Insurance Co. Ltd.", 2007 ACJ 1897 (Gujarat) and accordingly has laid down a procedure under which the Insurance companies or the owners of the motor vehicles depositing the amount in compliance of the Award of the Motor Accidents Claims Tribunal. These directions of the Division Bench lay down a complete scheme which the Insurance company is required to follow when the amount of compensation is deposited in pursuance of the Award of the Tribunal which include the interest amount. The Division Bench issued the following directions to be followed in all the cases arising before the Tribunal:

"6. Accordingly, we direct that the following procedure as laid down in the case of Hansagauri Prafulchandra Ladhani, 2007 ACJ 1897 (Gujarat), shall be followed in the present case and in all similar cases arising in future before the Motor Accidents Claims Tribunal:

(i) The insurance companies or the owners of the motor vehicles depositing the amounts in compliance with the awards of the Motor Accidents Claims Tribunal shall:

(a) first spread the interest amount over the relevant financial years for the

period from the date of filing the claim petition till the date of deposit.

(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before the Tribunal the amount liable to be deducted at source under the provisions of section 194A(3)(ix) of the Income Tax Act,1961. Such amount shall not, however, straightaway be paid over to Income Tax Department.

(c) produce before the Claims Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim application till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

(ii) The Tribunal shall ensure that the amount of interest accrued each year is apportioned amongst claims on year to year basis.

(iii) If the interest payable to any claimant during any particular financial year exceeds Rs.50,000, Claims Tribunal shall permit the insurance companies/owners to pay over the amount liable to be deducted at source under Section 194A(3) (ix) to the Income Tax Department in respect of that particular claimant for the particular year, without prejudice to the claimant's case that he is not liable to pay any income tax for that year.

(iv) For the financial year(s) for which the interest payable to the concerned claimant does not exceed Rs.50,000, that Tribunal may permit such claimant to withdraw the amount deposited as per direction (i)(b) without producing the certificate from the concerned income tax authority that there is no income tax liability on the interest which has accrued on the compensation awarded by the Tribunal.

(v) It is clarified that the amount other than the amount liable to be deducted at source under Section 194A(3)(ix) shall be invested/disbursed by the Tribunal.

(vi) When the claimants make applications before the authority under the Income Tax Act,1961 for the refund of the amount deducted under the provisions of Section 194A(3)(ix) of the Act, the concerned authority shall decide such applications with utmost expedition."

13. The learned Counsel for Respondent No. 1 also relies on a recent judgment of the Division Bench of Gujarat High Court in the case "New India Assurance Co. Ltd. v. Bhoyabhai Haribhai Bharvad"(supra) wherein though the Insurance Company tried to assert the proposition on clause (ix) and (ixa) of subsection (3) of Section 194A of the Income Tax Act (inserted with effect from 1.6.2015 by Finance Act,2015 substituting clause (ix)), the Division Bench however following the law laid down in the case of Smt. Hansagauri Prafulchandra Ladhani (supra) and confirming the interpretation as held therein wherein in a similar situation the law laid down in the case Smt. Hansagauri Prafulchandra Ladhani (supra) was not followed by the insurance company, it was directed that it was open to

the Insurance company to approach the Income Tax Department for refund of tax. In the present case there is no application of clause (ix) and (ixa) of subsection (3) of Section 194A as inserted with effect from 1 June 2015. It would be profitable to note the observations of the Division Bench in paragraphs 11 and 12 which read thus:

"11. Under Clause (ix) to subsection (3) of Section 194A of the Act, as it originally stood, requirement of deducting tax at source under sub section (1) would not apply in a case where any income is credited or paid by way of interest on compensation amount awarded by Motor Accident Claims Tribunal where the amount of such income or, the aggregate amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees. This provision of Clause (ix) is now divide into two parts and is replaced by Clauses (ix) and (ixa). Clause (ix), in the present form, refers to such income credited by way of interest on the compensation amount awarded by the Claims Tribunal. The case of crediting of interest on compensation therefore, would fall in Clause (ix) as it stands currently. Under Clause (ixa) would fall, any payment of interest on compensation awarded by the Claims Tribunal where the amount of such income or the aggregate paid during the financial year does not exceed fifty thousand rupees.

12. It would, therefore, be wholly incorrect to read the current provision of subsection (3) of Section 194A to argue that the cases of income credited by way of interest on compensation awarded by the Claims Tribunal is no longer part of sub section (3) for exclusion from purview of subsection (1) of Section 194A. In other words, worded slightly differently. The case of credit of interest on compensation awarded by the Claims Tribunal continues to find place in the exclusion clause contained in subsection (3) of Section 194A. In fact, it would prima facie appear that the ceiling of Rs.50,000/- per annum for such exclusion is now down away with in case of crediting of interest on compensation awarded by the Claims Tribunal while retaining such limit in cases of payment of interest on such compensation. However, we need not thresh out this last part of the issue since admittedly, in the present case, for none of the years under consideration, the interest income exceeded Rs.50,000/-. In fact, this Court in case of Smt. Hansagauri Prafulchandra Ladhani (supra) provided for further splitting up of this ceiling of Rs.50,000/- per claimant basis. Looked from any angle, the insurance company was not justified in deducting tax at source while depositing the compensation in favour of the claimants. It therefore, cannot avoid liability of depositing such amount with the Claims Tribunal. The Claims Tribunal had committed no error in insisting on the insurance company in making good the shortfall."

14. Learned Counsel for Respondent No. 1 has then placed reliance on a recent decision of the learned Single Judge of the Madras High Court in "Managing Director, Tamil Nadu State Transport Corporation (Salem) Ltd., Bharathipuram, Dharmapuri v. Chinnadurai" (supra). Though this decision does not consider the

decision of the Division Bench in "Gauri Deepak Patel" (supra), the Court has held that the Motor Vehicles Act is a social welfare legislation and if there is conflict between the social welfare legislation and a tax legislation, in that case the social welfare legislation will prevail, since it sub-serves larger public interest. The learned Judge coming to this conclusion has followed the decision of the Division Bench of the Himachal Pradesh High Court in the "Court on its Motion v. H.P.State Cooperative Bank Ltd. & Ors", 2014 SCC Online HP 4273 wherein the Division Bench of the Himachal Pradesh quashed the circular dated 14 October 2011 issued by the Income Tax Department which had directed deduction of income tax on the award amount and interest accrued on the deposit made under the order of the Court in Motor Accident Cases. The observations of the learned Single Judge read thus:"

15. Following the Division Bench Judgment, a learned Single Judge of the Punjab and Haryana High Court, in a recent decision, in New India Assurance Company Ltd. v. Sudesh Chawla and others, CR.No.430 of 2015 (O&M), reiterating the reasoning given by the Division Bench of Himachal Pradesh High Court, has opined that award of compensation is on the principle of restitution to place the claimant in the same position in which he would have been loss of life or injury has not been suffered and accordingly held that the orders calling upon the Insurance Company to pay TDS/deduct TDS on the interest part are not sustainable.

16. If we look at other jurisdictions like Australia, Unites States and United Kingdom, even there, the matters where a person has suffered an injury or there has been a loss of life and a compensation has been paid in lieu of that, then it has been held by the Courts that there cannot be any Tax deduction on such compensation. The underlying basis behind this is that a person who suffers a loss cannot be asked to part with the solatium he receives since it is the only remedy he has been provided with by the law.

17. If there is a conflict between a social welfare legislation and a taxation legislation, then, this Court is of the view that a social welfare legislation should prevail since it sub-serves larger public interest. The Motor Vehicle Act is one such legislation which has been passed with a benevolent intention for compensating the accident victims who have suffered bodily disablement or loss of life and the Income Tax Act which is primarily intended for Tax collection by the State cannot put spokes in the effective and efficacious enforcement of the Motor Vehicles Act. In fact, if one might deeply analyse, it could be seen that there is no direct conflict between any provisions of the Income Tax Act and the Motor Vehicles Act and it is only by the interpretation of the provisions the concept of compulsory payment of TDS has crept into the realm of compensation payment in Motor Vehicle Accident cases.

18. Hence, with due respect I am unable to concur with the findings of the Karnataka High Court, the Chattisgarh High Court and this Court cited by the Revision Petitioner. This Court is of the view that the Division Bench judgment of

the Himachal Pradesh High Court and the judgment of the Single Judge of the Punjab and Haryana High Court lay down the right law and hence, this Court arrives at the conclusion that the compensation awarded or the interest accruing therein from the compensation that has been awarded by the Motor Accident Claims Tribunal cannot be subjected to TDS and the same cannot be insisted to be paid to the Tax Authorities since the compensation and the interest awarded therein does not fall under the term "income" as defined under the Income Tax Act, 1961.

19. Therefore, this Court directs that the Petitioner Corporation cannot deduct any amount towards TDS and the same shall also be deposited in addition to the amount that has already been deposited to the credit of M.C.O.P.No.879 of 2006, on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court, Dharmapuri, within a period of four weeks from the date of receipt of a copy of this order and the Respondent is entitled to take appropriate steps in a manner known to law to withdraw the amount."

Thus the above decision of the learned Single Judge of Madras High Court reflects a different perspective, as also what has been held by the Division Bench of the Himachal Pradesh High Court, is to apply then, surely, it is an issue to be considered by the appropriate authorities.

15. The submissions on behalf of the Petitioner relying on a cumulative reading of Sections 56, 145A and 194A(3)(ix) of the Act cannot be accepted for two reasons, firstly there cannot be any dispute in the context what Section 56 and 145A would provide in respect of tax to be paid on interest directed to be paid on the compensation awarded by the Tribunal, as these provisions would stipulate and secondly, in view of the above clear position in law as laid down by the Division Bench of this Court in Gauri Deepak Patel & Ors. (supra) as also reiterated in the decision of the Division Bench of the Gujarat High Court in the this Court in "New India Assurance Co. Ltd. v. Bhoyabhai Haribhai Bharvad" (supra) interpreting Section 194(3)(ix) of the Act, relevant in the present context. Thus, the reliance on behalf of the Petitioner on the decision of the learned Single Judge of the Madras High Court in "The New India Assurance Co. Ltd. v. Mani S. Nachimuthu, N." and the decision in the case "Bikram Singh & Ors. v. Land Acquisition Collector & Ors.", JT 1996(8) SC 678 may not assist the Petitioner.

16. Resultantly the action of the Petitioner deducting tax at source on the interest awarded by the Tribunal, without following the mandate of the Division Bench of this Court in Gauri Deepak Patel & Ors. v. New India Assurance Co. Ltd. & Anr. (supra) was wholly unjustified and illegal. The Petitioner should have properly advised itself before deducting the tax at source on the interest amount following the law laid down in the case of Gauri Deepak Patel & Ors. v. New India Assurance Co. Ltd. & Anr. (supra)

17. The Writ Petition is without any merit and is accordingly rejected. No costs.