
(2014) 04 AP CK 0111

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2380 of 2012

The New India Assurance Company Limited

APPELLANT

Vs

Srikantha

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Banking Regulation Act, 1949 — Section 51

Income Tax Act, 1961 — Section 194A, 197(1A), 2[28A], 36, 44AB

Citation : (2015) 2 ACC 796 : (2015) 2 ALD 337

Hon'ble Judges : M. Seetharama Murthi, J

Bench : Single Bench

Advocate : Kota Subba Rao, Advocate for the Appellant; K. Sita Ram, Advocate for the Respondent

Judgement

M. Seetharama Murthi, J.—This revision petition is directed against the order dated 15.04.2011 passed by the learned First Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal, Adilabad ("the Tribunal", for short) in E.P. 4 of 2010 in M.V.O.P. No. 135 of 1994. The issues involved in the revision are as follows: (1) Adjustment and appropriation of payments towards costs, interests and principal; and (2) The correctness or otherwise of the income tax deducted [or to be deducted] at source, the position of law and the correct procedure that ought to be followed by the Insurance Company at the time of the deduction of tax at source from the amount of compensation/interest awarded to the claimants by the Motor Accidents Claims Tribunal under the provisions of the Motor Vehicles Act.

2. The facts necessary for consideration for the disposal of the present revision petition and the relevant exposition of law, in brief, are as follows: "The claim petition filed by the claimants/Decree Holders was allowed by the Tribunal and compensation was awarded to the claimants. They had filed the execution petition for realisation of the awarded amount of Rs. 3,17,000/- and interest and costs by attachment and sale of execution petition schedule movable properties

of the Judgment debtor. The New India Assurance Company/Judgment Debtor/ Revision Petitioner herein had deposited certain amount towards part satisfaction of the awarded compensation amount with interest and costs to the credit of the Original Petition before the Tribunal. The said amounts were withdrawn by the claimants/decreed holders. The Claimants/decreed holders filed their calculation memo. The Judgment debtor had also filed a memo and contended that the entire amount was deposited towards full satisfaction of the award long time back. However, the Insurance Company had deducted certain sum towards Income Tax Deductible at Source ("TDS" for short). However, the Decree Holders/claimants had disputed inter alia such tax deduction at source as contrary to Law and incorrect and claimed that the said deducted amount as still due from the judgment debtor. The Tribunal had accepted the adjustment of the amounts deposited as shown by the decree holders as correct and proper as on that particular date and had held that the claimants/decreed holders are further entitled to the execution petition amount and granted time to the Judgment Debtor for the deposit of the said amount and the amount that became due thereafter. Aggrieved of the orders of the Tribunal, the Assurance Company had preferred the present Revision Petition.

3. I have heard the submissions of the learned counsel for the revision petitioner/ Insurance Company and the claimants/decreed holders.

4. Now, the first question is about the proper manner in which the amount deposited by the Judgment debtor is to be adjusted and appropriated towards the amount due under the decree/award. This question need not detain this Court for long as the position is well settled. The execution petition claim as per the award and decree consists of claims towards interest on the principal amount of compensation awarded, costs and the principal amount of compensation. Admittedly the judgment debtor made certain payments towards the amount due under the award and the decree. There is admittedly no direction in the award and decree regarding the manner of appropriation of the part-payments/ payments towards principal/interest/costs. In M/s. Industrial Credit and Development Syndicate Now Called I.C.D.S. Ltd. Vs. Smt. Smithaben H. Patel and Others, the Hon"ble Supreme Court held as under:

16. In view of what has been noticed hereinabove, we hold that the general rule of appropriation of payments towards a decretal amount is that such an amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such direction, adjustments, be made firstly in payment of interest and costs and thereafter in payment of the principal amount. Such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree. As and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule.

Further, in Gurpreet Singh Vs. Union of India (UOI), , the Hon"ble Supreme Court

held as under:

39. Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur (supra) on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee decree holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit intimating the decree-holder of his intention. We, thus, approve the ratio of Prem Nath Kapur (supra) on the aspect of appropriation.

As per the ratio in the decision supra while making appropriation, if part amount is appropriated towards principal amount due under the award/decreed to that extent interest would cease to accrue upon that part of the principal amount and there is no reopening of the adjustment after such part payment is appropriated towards the part of the principal amount. A re-appropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree holder and that would be in the realm of unjust enrichment. In view of the ratio in the precedent, the amounts paid by the judgment debtor are to be appropriated firstly towards payment of interest and costs and thereafter in payment of principal as there are no directions in the award/decreed regarding adjustment of payments by the judgment debtor. However, the Court of execution is obliged to take into consideration the factual aspects of the instant case and examine whether any part payment that was made or a part of any such part payment that had remained after first appropriating towards interest and costs was adjusted towards principal amount. Such examination is necessary as in such a case on that part of the adjusted principal amount interest would cease to accrue and no reopening of adjustment is permissible once a part payment is appropriated towards the part of the principal amount. In the light of the legal position enunciated in the precedent suffice if the matter on this aspect is remitted to the Tribunal to examine the issue of adjustment or appropriation of part payments having regard to the facts and legal position obtaining.

5. The next short but important issue that was raised before this Court is - "Whether the action of the Insurance Company in deducting the income tax at source is correct or not under facts and in Law?"

5. (a) I have perused the copies of the rulings in the following cases. (1) The New India Assurance Co. Limited, Ongole v. Banavat Ramadevi, Prakasam District C.R.P. No. 3488 of 2011, dated 04.02.2013 (APHC), (2) United India Insurance Co. Ltd. Vs. Mitaben Dharmeshbhai Shah and Others, , (3) United India Insurance Co. Ltd. Vs. Janki Devi and Others, and (4) Oriental Insurance Co. Ltd. Vs. G.S. Diwakar and Others, . The decisions in the above cases were rendered having regard to the facts peculiar to those cases. However, in the decision in Oriental Insurance Co. Ltd. (supra), this Court had held inter alia as

follows: "No doubt, the revision petitioner company could not have deducted and remitted TDS on total interest amount of all DHRs put together, but should have divided interest relating to each of the DHRs and should have remitted TDS only in respect of interest payable to that DHR whose amount exceeded Rs. 50,000/-".

5. (b) It is necessary to first refer to the provisions of law and the content of the related circular which are relevant.

(i) Section 194A of the Income Tax Act ("the IT Act", for short), which is admittedly the relevant provision of law, reads as follows:

S. 194A: Interest other than "Interest on securities".--(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.

Explanation: For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) *****

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

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, does not exceed--

(a) ten thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

(b) ten thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(c) ten thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d) five thousand rupees in any other case:

Provided that in respect of the income credited or paid in respect of--

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co-operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India "for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36."

the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be;

(ii) *****

(iii) to such income credited or paid to--

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;

(iv) to such income credited or paid by a firm to a partner of the firm;

(v) to such income credited or paid by a co-operative society to a member thereof or to any other co-operative society;

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(vii) to such income credited or paid in respect of deposits (other than time

deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);

(viiia) to such income credited or paid in respect of,--

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;

Explanation *****

(viii) to such income credited or paid by the Central Government under any provisions of this Act, or the Indian income tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974).

(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.

[Emphasis supplied]

(x) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such fund or company or public sector company or scheduled bank;

Explanation 1.--For the purposes of clauses (i), (vii) and (viiia), "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.

(ii) Section 2[28A] of the IT Act, which defines interest, reads as under:

"Interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

As per the aforesaid provisions of the Act, the income tax is deductible at source not on the awarded compensation amount, but, on the amount of interest only that becomes payable in terms of the award on the compensation amount awarded by the Tribunal. It is also brought to the notice of this court that the

circular number 7 of 2003, which explained some of the relevant provisions of the Finance Act, 2003 contains relevant guideline in regard to basic exemption limit of Rs. 50,000/- [Rupees Fifty Thousand only].

5. (c) On an earnest consideration of the admitted facts and also the relevant provisions of Law, which are indisputably applicable, it emerges that the procedure and practice stated infra is the proper procedure and practice to be followed and resorted to in the matter of the tax-deductible at source in matters of this nature.

Section 194A of the Act obligates a person responsible for paying "to a resident" any income by way of interest to deduct income tax from such payment of interest at the time of crediting of such amount to the account of the payee or at the time of payment thereof in cash or by cheque or draft or by any other mode.

Sub-clause (ix) of the said sub-section (3) provides that the provisions of tax-deductible at source [TDS] do not apply to the income credited or paid by way of interest on the compensation amount awarded by the Tribunal where such amount of income or, as the case may be, the aggregate amount of such income credited or paid does not exceed Rupees 50,000/-.

Thus, if the amount of interest payable to a claimant does not exceed Rs. 50,000/- then the person responsible for payment is not required to deduct tax at source.

Since the deduction is to be made at the time of payment to "a resident", the said limit will apply separately in case of each individual resident. That is to say that if the payment of interest is being made to more than one claimant then unless the interest payable to each claimant exceeds Rs. 50,000/- in each case, the person responsible for payment is not obliged to deduct tax at source. To be exact, the limit of Rs. 50,000/- would apply separately in case of each individual claimant and, therefore, if the payment of interest is to be made to more than one claimant then unless the interest payable to each claimant separately exceeds Rs. 50,000/- in each case, the person responsible for payment or deposit of interest is not required to deduct the tax.

Further, what needs to be clarified is that the lump sum interest that had accrued upto the date of payment or deposit can be taken into consideration; and, the interest awarded and arrived at in case of each claimant need not be spread over on annual basis. In other words interest amount that had accrued on the awarded compensation is liable to be taxed in a lump sum when being paid/ deposited at one time and the interest calculated and arrived at in case of each claimant need not be spread over on an annual basis over the number of years for which such interest has been awarded from the date of filing of the claim petition and till the date of payment or deposit.

Considering the significance of the issue involved what has been stated in the preceding paragraph can be re-stated as follows:

[1] The person paying or depositing the compensation is not obligated to deduct any income tax at source on the actual compensation amount awarded.

[2] Such person is obligated to deduct tax at source from the amount of interest only, if only, the amount of interest payable to each claimant exceeds Rs. 50,000/-. However, such lump sum interest amount that had accrued up to the date of payment or deposit can be taken into consideration in case of each such claimant and such lump sum interest arrived at need not be spread over on annual basis even in cases interest accrued relates to more than one year.

Thus in effect there are two filters to be applied by the person who is obligated under Law to deduct tax at source.

And they are as under:

First one is distributing such interest among each of the claimants, in case the claimants are more than one and there is apportionment of compensation in the award/decreed." And, at the second stage the limit of Rs. 50,000/- prescribed under Law is to be applied.

5. (d) It is also settled legal position, as on today that in a case where the claimant is an income tax assessee and is having a PAN then, in case of such a claimant, the percentage of deduction of tax at source is 10%. But, where such claimant is not having a PAN, in his case, the deduction of tax at source shall be at the rate of 20%. Therefore, the payer like the insurance company shall, make a sincere effort to know from the claimant/payee as to whether he is having PAN or not and then proceed to make the deduction having regard to the said fact.

6. To sum up, the Tribunals have to take note of the following guidelines while dealing with the aspect of determination of correctness or otherwise of the TDS (Tax Deducted at Source) in cases of Motor Accident Compensation claims.

(1) The person or insurance company paying or depositing the compensation is not obligated to deduct any income tax at source on the actual compensation amount awarded.

(2) Such person or insurance company is obligated to deduct tax at source from the amount of interest only, if only, the amount of interest payable to each claimant exceeds Rs. 50,000/-. However, such lump sum interest amount that had accrued up to the date of payment or deposit can be taken into consideration in case of each such claimant for purpose of TDS and such lump sum interest arrived at in case of each claimant need not be spread over on annual basis even in cases where the interest accrued relates to a period of more than one year.

(3) In a case where the claimant is an income tax assessee and is having a PAN and furnishes the required details, then, in case of such a claimant, the percentage of deduction of tax at source shall be at the rate of 10%. But, where such claimant is not having a PAN and also fails to furnish the required form, in case of such claimant, the deduction of tax at source shall be at the rate of 20%.

Thus, in cases where the Decree Holder/claimant concerned fails to submit the PAN or the required form to the Insurance Company or the payer, as the case may be, then the TDS shall be at the rate of 20%, at present.

Be it noted that in case a claimant furnishes a declaration, on Form No. 15 G of R. 29C of the IT Rules in terms of Section 197(1A) of the IT Act or such other declaration on such Form as may be applicable, for each financial year, either to the person concerned or in the office of insurance company, in such a case the person/the insurance company is relieved of his/its obligation of payment of TDS. It is appropriate to mention that the TDS deducted on interest shall be deposited within the statutory period and the Person/the insurance company shall also file either the quarterly return or such return as prescribed and applicable to the case and shall furnish to the claimant a certificate either on Form No. 16A or on such form as may be prescribed and applicable to the case to enable the claimant to either avail the benefit of the tax deducted at source or to claim refund of the tax as the case may be.

7. Coming to the facts of the instant case, it is not clear from the record as to how the Tax Deductible at Source was arrived at and deducted. However, at this stage, it cannot be said that the insurance company is not entitled to deduct income tax at source on the interest amount without first ascertaining whether the interest amount in the case of each of the claimants had exceeded the prescribed limit or not. Therefore, as rightly urged by the learned counsel for the revision petitioner, this Court is of the well-considered view that this is a fit case to set aside the orders of the tribunal and remit the matter to the tribunal to decide afresh on the requirement, if any, and the correctness or otherwise of the amount deducted at source towards income tax and then dispose of the execution petition in accordance with the procedure established by law.

8. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside and the matter is remitted to the tribunal with a direction to decide the execution petition afresh keeping in view the legal position enunciated and dispose of the execution petition on merits and in accordance with the procedure established by law. Both the parties are given liberty to file fresh calculation memos. The Court of execution may also permit the parties to adduce fresh oral and documentary evidence, if the parties so desire. No costs. Miscellaneous Petitions, if any, pending in this revision shall stand dismissed.