
(2004) 03 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 2995 of 2004

United India Insurance Co. Ltd.

APPELLANT

Vs

Mitaben Dharmeshbhai Shah and Others

RESPONDENT

Date of Decision : 09-03-2004

Acts Referred:

Income Tax Act, 1961 — Section 194A
Motor Vehicles Act, 1988 — Section 168, 171

Citation : (2004) 3 ACC 413 : (2004) ACJ 1996 : (2004) 189 CTR 329 : (2004) 2 GLR 1069 : (2004) 269 ITR 63

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : P.V. Nanavati, for the Appellant; Zubin F. Bharda, for the Respondent

Final Decision : Allowed

Judgement

R. M. Doshit, J.—Heard the learned Advocates.

2. Rule returnable today. Learned Advocate Mr. Bharda waives service of Rule.

3. The petitioner before this Court is the Insurance Company against whom in a decree has been passed by the Motor Accidents Claims Tribunal, Valsad. In the ensuing execution proceeding being Misc. Civil (Execution) Application No. 45 of 2003 the petitioner-Insurance Company raised objection that the petitioner was not liable to deposit the entire amount of outstanding dues since the Insurance Company has deducted a sum of Rs. 69,538-00 as tax deducted at source u/s 194A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

4. The learned Judge, however, relied upon the judgment of the Bombay High Court in the Matter of Islamic Investment Co. v. Union of India,. Following the said judgment the Tribunal held that the amount of interest awarded to the claimants became the judgment debt and lost character as interest. The Insurance Company was duty bound to deposit the entire amount of judgment debt. The Tribunal, therefore, by impugned order, directed the petitioner-

Insurance Company to deposit the entire outstanding dues under the award of the Tribunal. Feeling aggrieved, the Insurance Company has preferred the present petition.

5. Learned Advocate Mr. Nanavati has relied upon Section 194A of the Act and has submitted that the Act specifically provides for deduction of tax at source from the amount of interest due and payable by the judgment-debtor on the amount of compensation by the Motor Accidents Claims Tribunal.

6. Learned Advocate Mr. Bharda has contested the petition and has relied upon the referred judgment in the matter of Islamic Investment Co. (supra) and the judgment of the Hon"ble Supreme Court in the matter of All India Reporter Ltd., Nagpur Vs. Ramachandra Dhondo Datar,

7. In the said judgment the Hon"ble Supreme Court has observed that, ".....when the claim is merged in the decree of Court, the claim assumes the character of a judgment debt, and to judgment-debts Section 18 of the Income Tax Act has not been made applicable. The decree passed by the Civil Court must be executed subject to the deduction and adjustments permissible under the Code of Civil Procedure. The Rule that the decree must be executed according to its tenor may be modified by a statutory provision. But there is nothing in the Income Tax Act which supports the plea that in respect of the amount payable under a judgment-debt of the nature sought to be enforced, the debtor is entitled to deduct Income Tax which may become due and payable by the judgment-creditor on the plea that the cause of action on which the decree was passed was the contract of employment and a part of the claim decreed represented amount due to the employee as salary or damages in lieu of salary."

8. Section 194A has been inserted in the Income Tax Act, 1961 by Finance (No. 2) Act, 1967 with effect from 1st April, 1967. Sub-section (1) thereof enjoins upon a 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 to deduct Income Tax thereon at the rates in force. Clause (ix) of Sub-section (3) of the said Section 194A reads as under :

"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 amount of such income credited or paid during the financial year does not exceed fifty thousand rupees."

Thus, the provisions of Section 194A of the Act have been specifically made applicable to the interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal.

9. The said clause has been inserted with effect from 1st June, 2003 by the Finance Act, 2003. Admittedly, the amount of interest has been deposited by the petitioner-Insurance Company on 2nd July, 2003 i.e. after 1st June, 2003. In view of the aforesaid specific provisions contained in the Income Tax Act, the

Insurance Company was duty bound to deduct the amount of Income Tax from the amount of interest by it. The Tribunal is, therefore, not right in relying upon the aforesaid Judgment in the matter of Islamic Investment Co. (supra). As stated In Re. All India Reporter Ltd., "the Rules that the decree must be executed according to its tenor may be modified by a statutory provision". In view of the express provision as aforesaid, the decree passed against the petitioner-Insurance Company shall stand modified accordingly.

10. In view of the above discussion the petition is allowed. The impugned order dated 23rd February, 2004 passed by the Motor Accidents Claims Tribunal, Valsad in Misc. Civil (Execution) Application No. 45 of 2003 is quashed and set aside.

11. Rule is made absolute. The parties shall bear their own costs.