
(2011) 02 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 1843 of 2010 (O and M)

Uttar Haryana Bijli Vitran Nigam Panchkula

APPELLANT

Vs

M.N. Conductors

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 227
Income Tax Act, 1961 — Section 194

Citation : (2011) 02 P&H CK 0152

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Ram Chand Gupta, J.—The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 18.4.2009, Annexure P4, passed by learned Additional District Judge, Panchkula in execution petition arising out of award dated 20.12.2001.

2. I have heard learned Counsel for the parties and have gone through the whole record carefully including the impugned order passed by learned Executing Court.

3. Brief facts relevant for the decision of present revision petition are that a dispute arose between the parties, which were referred to sole Arbitrator as per the agreement. The Arbitrator passed the award dated 20.12.2001. Objection petition filed against the said award was dismissed by learned Additional District Judge, Panchkula, vide judgment dated 17.4.2004. Decree-holder filed execution petition, during pendency of which judgment debtor deposited a cheque for Rs. 3,77,312/-dated 19.12.2006 on 23.12.2006 in the name of M/s M.N. Conductors Private Limited. However, later on it was alleged that the cheque was issued in the wrong name and hence, another cheque was given to decree-holder in the correct name on 12.5.2007. An application was filed by decree-holder for claiming interest on the amount of cheque from the date of previous cheque which was issued in the wrong name till the date of payment. A sum of Rs.

1,09,165/-has also been sought by Respondent-decree holder as an amount of income tax deducted at source by Petitioner-judgment debtor.

4. Learned Additional District Judge, Panchkula, allowed the said application by observing as under :

8. In this case, lapse was not attributed to the DH. The JD should have been vigilant while issuing the cheque. The cheque should have been issued in the correct name. Similarly, income tax was not payable @32% per annum on the decrual amount because this amount was not the income but was price of the goods supplied by the DH to the JD. No amount has been returned by the JD on account of security deposit.

9. In the totality of the facts and circumstances, I hold that the JD did not deposit due amount and issued the cheque in the name of wrong person. The JD also deducted income tax wrongly. The DH cannot be allowed to suffer on account of lapse on the part of the JD. Resultantly, I direct the JD to refund Rs. 1,09,155/-and security amount together with interest @ 18% per annum. Further I direct the JD to pay interest upto 12.5.2008 i.e., the date of giving cheque to the DH @ 18% per annum as allowed by the learned Additional District Judge, Panchkula, while dismissing the objection petition.

5. It has been contended by learned Counsel for the Petitioner-judgment debtor that income tax was rightly deducted by Petitioner-judgment debtor u/s 194A of Income Tax Act (hereinafter to be referred as the `Act") as the amount awarded by the Arbitrator was on account of interest and that on interest income, Drawing and Disbursing Officer was under an obligation to deduct the income tax. Hence, it is contended that learned trial Court has wrongly directed the judgment debtor to refund the amount of tax along with interest already deducted. It is further contended that learned trial Court has also committed an error in ordering for payment of interest on the security amount as there was nothing in the award of Arbitrator for payment of interest on the security amount and no such plea was also taken by Respondent-decree holder in its application for payment of interest on security amount. Further it is contended that so far as payment of interest upto 12.5.2007, upto from the date of giving cheque to decree holder is not being disputed by present Petitioner-judgment debtor.

6. On the other hand, it has been contended by learned Counsel for the Respondent-decree holder that income tax has been wrongly deducted @20% whereas it should have been deducted @ 10% as Respondent-decree holder is a partnership firm and not a limited company. It is further contended that Respondent-decree holder is also entitled for interest on the security amount.

7. So far as first contention of learned Counsel for the Respondent-decree holder is concerned, even if it is taken that the Respondent-decree holder is a partnership firm and not a limited company and that tax was to be deducted @ 10% and not @ 20%, Respondent - decree holder could claim refund from income tax Department by filing return u/s 237 of the Act.

8. Learned Counsel for the Respondent-decree holder has failed to show this Court that it was in the knowledge of Petitioner-judgment debtor that Respondent is a partnership firm and not a limited company and hence it cannot be said that Petitioner intentionally deducted income tax at a higher rate.

9. So far as second plea of Respondent-decree holder is concerned, there is force in the argument of learned Counsel for the Petitioner that no such claim was made by Respondent-decree holder before the Arbitrator for payment of interest on security and no such award was also passed by Arbitrator for making payment of interest on the security amount and hence the impugned order passed by learned Additional District Judge, Panchkula, is illegal.

10. As a sequel to my above discussion, impugned order passed by learned Additional District Judge, Panchkula is modified to the extent that Respondent-decree holder is not entitled for Rs. 1,09,155/-, i.e., the amount of income tax deducted at source by Petitioner and that Respondent-decree holder is also not entitled for interest on security amount.

The present revision petition is disposed of accordingly.