THE HIGH COURT OF MADHYA PRADESH
MP No.546/2019
National Insurance Company Ltd. Vs. Smt. Ram Khiloni alias Khiloni and others

Gwalior, Dated :24/06/2019

Shri R.V. Sharma, Advocate for petitioner.

Ms. Meena Singhal, Advocate for respondents no.1 to 5.

This petition under Article 227 of the Constitution of India has been filed against the order dated 1-11-2018 passed by 6th Additional Motor Accident Claims Tribunal, Gwalior in Execution Claim Case No.107/2018, by which the Insurance Company has been directed to pay the amount of interest, which has been deducted by way of TDS.

2. The necessary facts for the disposal of the present petition in short are that the respondents no.1 to 5 had filed a claim petition under Section 166 of Motor Vehicles Act, and 6th Motor Accident Claims Tribunal by impugned award, held that the driver, owner as well as the Insurance Company are jointly and severally liable to pay compensation with interest payable from the date of claim petition.

3. The Insurance Company calculated the interest amount and deposited the entire compensation amount as well as the interest amount after deducting TDS on interest.

4. The respondents no.1 to 5 objected to it and the Executing Claims Tribunal by impugned order has decided the objection in favour of the claimants and held that if the interest amount is spread over to the number of years from the date of filing of the claim, then

in none of the financial year, the interest more than Rs.50,000/- had accrued, therefore, the Insurance Company has wrongly deducted the TDS on interest and thus, has directed the petitioner to deposit the amount of TDS, so deducted on the interest paid by it.

5. Challenging the order passed by the Executing Claims Tribunal, it is submitted by the Counsel for the petitioner, that in view of Section 145-B of Income Tax Act, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received. It is further submitted that the petitioner has rightly deducted the TDS on the interest which has been paid to the claimants and if the claimants are of the view, that excess tax has been deducted, then they can claim refund from the Income Tax Department. To buttress his contentions, the Counsel for the petitioner has relied upon the judgment passed by the High Court of Gujarat in the case of **United India Insurance Co. Ltd., Vs. Mitaben Dharmeshbhai Shah and others,** reported in **2004 ACJ 1996,** Order passed by a co-ordinate Bench of this Court in the case of **National Insurance Company Ltd., Vs. Sunita and others** passed in **W.P. No. 939/2005** on **16-1-2006**, **United India Insurance Company Ltd. Vs. Janki Devi and others** reported in **2009 ACJ**

1937, Judgment passed by High Court of Karnataka in the case of **Oriental Insurance Co. Ltd. Vs. Chennabasavaiah and others** reported in **2016 ACJ 78,** Judgment passed by High Court of Kerala in the case of **National Insurance Co. Ltd. Vs. Subhas N. Chandrabose and others** reported in **2014 ACJ 1497,** and a co-ordinate bench of this Court in the case of **New India Assurance Co. Ltd. VS. Beerval Rawat and others** passed on **6-10-2018** in **W.P. No. 3837/2016.**

6. *Per contra*, it is submitted by the Counsel for the respondents no.1 to 5 that the interest paid to the claimants is to be spread over in number of years from the date of filing of the claim and the TDS should be deducted only when the spread over interest for a particular year exceeds Rs.50,000/-. To buttress her contentions, the Counsel for the respondents no.1 to 5 has relied upon the judgment passed by a co-ordinate bench of this Court in the case of **United India Insurance Co. Ltd. Vs. Ramlal and others** passed on **23-11-2010** in **C.R. No. 274 of 2008.**

7. Considered the submissions made by the Counsel for the parties.

8. Section 145-B of Income Tax Act, reads as under :

> **145-B. Taxability of certain income**.— (1) Notwithstanding anything to the contrary

> contained in Section 145, the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received.
>
> (2) Any claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
>
> (3) The income referred to in sub-clause (*xviii*) of clause (*24*) of Section 2 shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

9. Section 194-A(3)(ix) and (ix-a) of Income Tax Act would apply, for deduction of Tax at source in case if interest paid on the compensation amount awarded by the Motor Accidents Claims Tribunal, exceeds Rs.50,000/-. Section 194-A (3)(ix) (ix-a) of Income Tax Act reads as under :

> **194-A. 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 44-AB 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) *omitted*

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

(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(*ix-a*) to such income 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;

10. If Section 194-A(3)(ix)(ix-a) and Section 145-B of Income Tax Act are read conjointly, then it would be clear that the interest received by an assessee on any compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the previous year in which it is received and if the total interest exceeds Rs.50,000/-, then the Insurance Company has to deduct the

TDS.

11. Further, a person would become entitled for the compensation amount, only after the award is passed and before that, it cannot be said that the claimant is entitled for any compensation or interest.

12. The Counsel for the respondents no.1 to 5 has relied upon the judgment passed by the co-ordinate bench of this Court in the case of **Ramlal and others** and submitted that the interest paid by the Insurance Company has to be spread over in number of years from the date of filing of the claim petition.

13. Considered the submissions made by the Counsel for the respondents no. 1 to 5.

14. It is well established principle of law, that the provision of exemption has to be construed strictly and in case of any ambiguity, the benefit must go to the revenue.

15. The Supreme Court in the case of **Novopan India Ltd. Vs. CCE & C,** reported in **1994 Supp (3) SCC 606** has held as under :

> **16.** We are, however, of the opinion that, on principle, the decision of this Court in *Mangalore Chemicals* — and in *Union of India* v. *Wood Papers* referred to therein — represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee — assuming that the said principle is good and sound — does not apply to the construction of an exception or

> an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in *Mangalore Chemicals* and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in *Hansraj Gordhandas* v. *H.H. Dave* that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

The Supreme Court in the case of **State of Jharkhand Vs. Tata Cummins Ltd.** reported in **(2006) 4 SCC 57** has held as under :

> **16.** Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly..........

16. The Counsel for the respondents no.1 to 5, could not point out

any provision requiring the Insurance Company to deduct the TDS after spreading over the interest in number of years from the date of filing of the claim petition.

17. In the case of **Ramlal (Supra)** reliance was placed on a judgment passed by the Supreme Court in the case of **Smt. Rama Bai Vs. CIT** reported in **(1990) 84 CTR (SC) 164** and **K.S. Krishna Rao Vs. CIT** reported in **(1990) 84 CTR (SC) 144.** Both the above mentioned judgments have been passed in the case of award of interest in the Land Acquisition Matters. However, the cases of Land Acquisition cannot be equated with Motor Accident Claim Cases. In the cases of Land Acquisition, an owner becomes entitled for compensation from the date of taking over of possession of land whereas in the case of Motor Accident Claim Cases, a claimant becomes entitled for compensation, only after the award is passed after adjudication of his entitlement. An award under the Motor Vehicles Act can be passed only when it is proved by the claimants that the deceased/injured was not negligent, and the driver of the vehicle was driving the vehicle in a rash and negligent manner, and further the deceased had died in a vehicular accident, whereas in the case of compensation under the Land Acquisition Act, an owner becomes entitled to receive the compensation, immediately after his

land is acquired and possession is taken. Even otherwise, the Supreme Court in the case of **CIT Belgaum Urban Development Authority Vs. CIT** reported in **(2017) 13 SCC 759** has held as under:

> **9.** The respondent does not dispute the payment of Rs 1,96,780 as payment of interest for belated payment of compensation in respect of land acquired and the fact that the said interest paid for belated payment of compensation is liable to income tax is not disputed. However, the question is as to whether the tax in respect of the said payment has to be deducted at source under Section 194-A of the Act? It has been clearly laid down in the decision cited by the learned counsel appearing for the appellants in *Bikram Singh case* that the said payment which is exigible to income tax regarding interest payable for the belated payment of compensation is covered under Section 194-A and has to be deducted at source. In the said case, the Land Acquisition Officer had deducted at source the tax payable in respect of the interest under Section 194-A of the Act regarding interest payable for belated payment of compensation in the land acquired and the said action on the part of the Land Acquisition Officer was challenged before the High Court of Punjab and Haryana. The writ petition was dismissed holding that the deduction of the payment of interest at source under Section 194-A by the Land Acquisition Collector was valid and perfectly justified. Being aggrieved by the same, Civil Appeal No. 12500 of 1996 was filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court has clearly laid down in para 10 of the said judgment as follows (p. 557 of ITR): (*Bikram Singh case*, SCC pp. 247-48, para 10)

> "*10*. But the question is whether the interest on delayed payment on the acquisition of the immovable property under the Acquisition Act would not be exigible to income tax? It is seen that this Court has consistently taken the view that it is a revenue receipt. The amended definition of "interest" was not intended to exclude the revenue receipt of interest on delayed payment of compensation from taxability. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. The amendment is only to bring within its tax net, income received from the transaction covered under the definition of interest. It would mean that the interest received as income on the delayed payment of the compensation determined under Section 28 or 31 of the Acquisition Act is a taxable event. Therefore, we hold that it is a revenue receipt exigible to tax under Section 4 of the Income Tax Act. Section 194-A of the Act has no application for the purpose of this case as it encompasses deduction of the income tax at the source. However, the appellants are entitled to spread over the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year."

10. It is clear from the principle laid down by the Hon'ble Supreme Court as narrated in para 10 of the judgment in *Bikram Singh case* as cited above, that the Hon'ble Supreme Court has clearly laid down that interest payable for belated payment of compensation for the land acquired is exigible to tax and the Land Acquisition Officer was justified in deducting the tax under Section 194-A of the Act for the said payment also. There

> is no merit in the contention of the learned counsel appearing for the respondent that the Hon'ble Supreme Court has laid down in the said case that, though the Hon'ble Supreme Court has held that it is a revenue receipt exigible to tax under Section 4 of the Act, Section 194-A of the Act has no application for the payment of interest applicable as it is clear that the said principle has not been laid down by the Hon'ble Supreme Court in para 10 of the judgment as narrated above. What has been laid down by the Hon'ble Supreme Court is that the interest payable for belated payment of compensation for the land acquired is exigible to tax and the Hon'ble Supreme Court has confirmed the deduction of tax towards payment of interest under Section 194-A of the Act and has further observed, "Section 194-A of the Act has no application for the purpose of this case". In view of the fact that the Land Acquisition Officer had already deducted the amount under Section 194-A of the Act, mere fact that the assessee can spread over the income for a period in which payment came to be made would not by itself be a ground to exempt it from Section 194-A of the Act, as it is always open for the assessee to claim refund of the amount, if tax is deducted in excess or paid in excess. There is also no merit in the contention of the learned counsel appearing for the respondent that in view of the circular, instruction issued by the Government of Karnataka, no deduction has been made at source in view of the principle laid down by the Hon'ble Supreme Court in *Bikram Singh case*, as circular cannot override the principle laid down by the Hon'ble Supreme Court.

18. It is not out of place to mention here that in the case of **Bikram Singh Vs. Land Acquisition Officer**, reported in **(1997) 10 SCC**

243, the judgments passed by the Supreme Court in the case of **Smt. Ramabai (Supra)** and **K.S. Krishna Rao (Supra)** were taken into consideration.

19. It is next contended by the Counsel for the respondents no.1 to 5, that since, the Claims Tribunal has apportioned the compensation amount amongst the claimants, and since, the interest payable to each of the claimant is ascertainable, therefore, the Insurance Company was not right in deducting the TDS on the entire interest. To buttress her contentions, the Counsel for the respondents no.1 to 5 has relied upon the judgment passed by a co-ordinate bench of this Court in the case of **National Insurance Company Limited Vs. Smt. Draupadibai** reported in **2011(1) MPLJ 251.**

20. Considered the submissions made by the Counsel for the respondents no. 1 to 5/claimants.

21. This Court has gone through the award passed by the Claims Tribunal, which reads as under:

(1) अनावेदकगण, आवेदकगण को संयुक्ततः पृथक पृथक रूप से क्षतिपूर्ति की राशि 6,55,000/– रूपये (छः लाख पचपन हजार रूपये) एवं उक्त राशि पर दावा दिनांक 11.01.2017 से 6 प्रतिशत वार्षिक की दर वसूली दिनांक तक ब्याज अदा करेंगे।

(2) यह कि आवेदकगण द्वारा कोई अंतरिम क्षतिपूर्ति की राशि प्राप्त की गयी हो तो उसे इस अवॉर्ड की राशि में समायोजित किया जाये।

(3) **क्षतिपूर्ति राशि अधिकरण में जमा किये जाने पर** आवेदक क्र. 1 को 30 प्रतिशत राशि एवं आवेदक क्र. 2 एवं 4 को 20–20 प्रतिशत राशि तथा आवेदक क्रमांक–3 व 5 को 15–15 प्रतिशत राशि प्रदान की जावे।

(4) आवेदक क्र. 1 को प्राप्त होने वाली राशि में से 50 प्रतिशत राशि उसे जर्ये बचत खाता के माध्यम से नगद भुगतान की जावे तथा शेष राशि 5 वर्ष के लिये सावधि खाते में जमा की जावे तथा उक्त राशि पर मिलने वाले त्रैमासिक ब्याज का भुगतान बचत खाते के माध्यम से किया जावे। आवेदक क्र. 2 को प्राप्त होने वाली राशि 3 वर्ष के लिये तथा आवेदक क्र. 4 को प्राप्त होने वाली राशि 5 वर्ष के लिये किसी राष्ट्रीयकृत बैंक में सावधि खाते में जमा की जावें।

(5) आवेदक क्र. 3 को मिलने वाली राशि में से 50 प्रतिशत राशि उसे जर्ये बचत खाता के माध्यम से नगद भुगतान की जावे तथा शेष राशि 3 वर्ष के लिये सावधि खाते में जमा की जावे तथा उक्त राशि पर मिलने वाले त्रैमासिक ब्याज का भुगतान बचत खाते के माध्यम से किया जावे तथा आवेदक क्र. 5 को प्राप्त होने वाली राशि उसके वयस्क होने तक किसी राष्ट्रीयकृत बैंक में सावधि खाते में जमा की जावे।

(6) अनावेदकगण स्वयं के साथ साथ आवेदकगण का वाद व्यय वहन करेंगे।

(7) अधिवक्ता शुल्क प्रमाणित होने पर अथवा नियमानुसार जो भी कम हो जोड़ा जाये।
उपरोक्तानुसार व्यय तालिका तैयार की जावे।

मेरे बोलने पर टंकित किया गया।

स्थान : ग्वालियर ।
दिनॉक : 28.04.2018

(राम जी गुप्ता)
प्रथम मोटर दुर्घटना दावा अधिकरण
ग्वालियर, म0प्र0

22. Thus, it is clear that the Insurance Company has been directed to deposit the lump sum compensation amount along with interest and only after the amount with interest is deposited by the Insurance Company, the said amount was to be apportioned amongst the claimants. The Insurance Company was not directed to calculate the compensation amount with interest as per the share determined by the Claims Tribunal. Under these circumstances, this Court is of the considered opinion, that the Insurance Company did not commit any mistake in deducting the TDS on the entire interest. However, each

of the claimant would be entitled to claim refund from the Income Tax Department, in case, if he/she is of the view that excessive tax has been deducted. The co-ordinate bench of this Court in the case of **Smt. Draupadibai (Supra)** has held as under :

> 13. It is however, made clear that the aforesaid interpretation of section 194A of the 1961 Act applies only in cases were the compensation amount has been apportioned and the interest payable to each of the claimants is ascertainable but the position may be different when no such apportionment is done by the Tribunal in the award and interest payable to each claimant separately is not ascertainable at the time of depositing the interest amount before the Tribunal.
>
> Underline applied

23. Thus, this Court is of the considered opinion, that the Insurance Company is liable to deduct TDS on the interest paid by it as per the provisions of Section 194-A (3)(ix)(ix-a) of the Income Tax Act, and if the assessee is of the view, that the tax has been deducted in excess, then he can always claim refund of the same from the Income Tax Department.

24. Accordingly, this Court is of the considered opinion that the Executing Claims Tribunal, committed material illegality by holding that the Insurance Company is not liable to deduct the TDS.

25. Resultantly, the order dated 1-11-2018 passed by 6th Additional

Motor Accident Claims Tribunal, Gwalior in Execution Claim Case No. 107/2018 is hereby set aside.

26. The petition succeeds and is hereby **Allowed.**

(G.S. Ahluwalia)
Judge

Arun*