

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 14244 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

NEW INDIA ASSURANCE CO LTD....Petitioner(s)

Versus

BHUPATSINH @ FALJI GOPALJI VAGHELA & 2....Respondent(s)

Appearance:

MR VIBHUTI NANAVATI, ADVOCATE for the Petitioner(s) No. 1
 (MR SURESHM SHAH), ADVOCATE for the Respondent(s) No. 1
 MR MEHUL S SHAH, ADVOCATE for the Respondent(s) No. 1
 MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 3
 NOTICE SERVED BY DS for the Respondent(s) No. 2
 RULE SERVED for the Respondent(s) No. 3
 RULE UNSERVED for the Respondent(s) No. 1 - 2

CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**Date : 20/01/2017****ORAL JUDGMENT**

1. Heard Mr. Nanavati, learned advocate for the petitioner insurance company, Mr. Bhatt, learned advocate for income tax authority, and Mr. V.C.Mehta, learned advocate, for Mr. Mehul S. Shah, learned advocate for the respondent workman.

2. This petition is taken out by the insurance company.

3. In present petition, the petitioner insurance company has prayed, inter alia, that:-

"8(A) Your Lordships may be pleased to call for the R&P of W.C.Case No.292 of 1996 from the Office of learned Workmen's Compensation Commissioner, Labour Court, Kachchh at Bhuj and after perusing the same, be pleased to issue appropriate writ, direction and further be pleased to quash and set aside the judgment and order rendered in W.C.Case No.292 of 1996 by the learned Workmen's Compensation Commissioner, Labour Court, Kachchh at Bhuj on 23.9.2008 (Annexure-F);

(B) Your Lordships may further be pleased to grant stay against execution, operation, implementation and effect of judgment and order rendered in W.C.Case No.292 of 1996 by the learned Workmen's Compensation Commissioner, Labour Court, Kachchh at Bhuj on 23.9.2008 (Annexure-F);

(C) Your Lordships may be pleased to grant ad-interim relief in terms of para (B) above, pending hearing and final disposal of the petition.

(D) In the alternative, your Lordships may be pleased to direct respondent no.3 Income-tax authorities to issue the refund order of the amount directed to be deposited by the petitioner as per the judgment and order rendered in W.C.Case No.292 of 1996 by the learned Workmen's Compensation Commissioner,

Labour Court, Kachchh at Bhuj on 23.9.2008 in favour of the original claimant – respondent no.1 herein (Anne-F);”

4. The petitioner insurance company is aggrieved by the order directing it to pay/deposit Rs.15,793/- which amount it had deducted towards TDS from the amount payable and paid to the original claimant so as to comply the award dated 21.02.2008 passed by the Commissioner in Claim Application filed by the claimant.

5. So far as factual background is concerned, it has emerged that the original claimant Mr. Falaji Gopalji Vaghela @ Bhupatsinh had filed claim application before the Workmen's Compensation Commissioner under the provisions of Workmen's Compensation Act. The said claimant filed the claim application against his employer i.e. present respondent No.2 Mr.Chhotabhai Ayar. The said claim application was registered as Compensation Application No.292 of 1996. The learned Commissioner adjudicated the said

application and decided the same vide judgment dated 21.2.2008 and directed the employer and insurance company to pay Rs.1,08,455/- towards compensation with interest at the rate of 9% from the date of accident till the date of actual payment and realization. Accordingly, the insurance company was obliged to pay the said amount.

5.1 While depositing the amount as per the said order, the insurance company appears to have deducted Rs.15,793/- by way of/ towards TDS. The balance amount was deposited by the insurance company on 6.6.2008.

5.2 Subsequently, original claimant filed application before the Commissioner with the grievance that the said amount of Rs.15,793/- could not have been deducted and he is entitled for full amount and interest as awarded by the judgment dated 21.02.2008 and the said Rs.15,793/- must be refunded to him.

5.3 The Commissioner considered the said grievance and vide order dated 23.9.2008 directed the insurance company to pay/ refund the said amount Rs.15,793/- to the claimant.

6. Feeling aggrieved by the said direction, the insurance company has taken out present petition.

7. Mr. Nanavati, learned advocate for the petitioner insurance company, submitted that by the decree dated 21.2.2008 in Workmen's Compensation Claim Application, the Commissioner also awarded interest at 9% from the date of accident. He submitted that the compensation amount was determined at Rs.1,08,455/- by the said judgment and the balance amount which came to be deposited represents interest.

7.1 Mr. Nanavati, learned advocate for Insurance Company submitted that the interest awarded by Workmen's Compensation Commissioner

tantamount to the claimant's "income" under the provisions of Income Tax Act.

7.2 So as to support his submission, Mr. Nanavati, learned advocate for the Insurance Company relied on Section 194A of Income Tax Act. The said provision reads thus:

"SECTION 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 k [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 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 by the Finance Act, w.e.f 1.6.1992]

- (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 j [two thousand five hundred rupees;]

[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, applies (including any bank or banking institution referred to in section 51 of that Act)

or

(b) time deposit 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 cooperative society or the public company or the cooperative 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, 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, or

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

(e) any company or co-operative society carrying on the Business of Insurance, or

(f) such other institution, association or body d [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 e [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, applies (including any bank or banking institution referred to in section 51 of that Act);

(viia) 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;]

(viii) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922, or the Estate Duty Act, 1953, or the Wealth-tax Act, 1957, or the Gift-tax Act, 1958, or the Super Profits Tax Act,

1963, or the Companies (Profits) Sur-tax Act, 1964, or the Interest-tax Act, 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;]

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

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

[***] Omitted by The Finance Act, 2006, [No.21 of 2006], Section 40, dated 18th April, 2006.

[(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.]

Explanation.-[Omitted by the Finance Act, 1992, w.e.f 1.6.1992]

A copy of the receipt is annexed herewith and marked as Annexure-B and copy of Form 16-A certificate of TDS is annexed herewith and marked as Annexure-C respectively. "

7.3 He further submitted that in view of the said provision the Insurance Company was advised to deduct Tax (payable in respect of "interest income") and deposit the said amount with Income Tax Authority and consequently the Insurance

Company merely complied statutory requirement and, therefore, the learned Commissioner is not justified in directing the Insurance Company to pay/ deposit the said amount. On the said ground. Mr. Nanavati opposed the judgment and submitted that the impugned direction may be set aside.

8. Mr. Vijay Patel for Ms. Mauna M. Bhatt, learned advocate for Income Tax Department submitted that the petitioner Insurance Company has demanded refund of the amount paid/ deposited by it towards TDS, however, there is no provision under the Act for refund. He further submitted that for re-claiming said amount the claimant shall have to file Return with the Income Tax Authority and reclaim the amount paid by Insurance Company.

9. Learned advocate for original claimant submitted that the claimant is not assessee and he does not have/ earn taxable income and, therefore, claimant would not be able to file

return and reclaim the amount deposited by the Insurance Company after deducting it from compensation amount payable to him as per decree dated 21.02.2008 passed by Workmen's Compensation Commissioner. He also submitted that even otherwise for the act or mistake of insurance Company why should the claimant undergo such procedure. On the said grounds learned advocate for claimant supported and justified the direction by Workmen's Compensation Commissioner.

10. I have considered rival submissions and also considered material available on record.

11. Facts are not in dispute.

12. It has emerged from the record that in view of the direction passed by the Workmen's Compensation Commissioner vide judgment dated 21.02.2008, the claimant was entitled for Rs.1,08,455/- towards compensation.

13. As per the said judgment, the Insurance Company was also liable to pay Rs.1,53,938/- towards interest.

14. Consequently, total amount payable to the claimant would be Rs.2,63,393/-.

14.1 However, Insurance Company deposited Rs.2,46,600/- after deducting, by way of TDS Rs.15,793/-. The said deduction gave rise to the subsequent application by the claimant wherein impugned order came to be passed.

15. Before proceeding further, it is relevant to take into account below quoted observation from the decision by the Division Bench of this Court in case of *Hansagauri Prafulchandra Ladhani and ors v. Oriental Insurance Company Limited and ors*, reported in 2007 GLH (2) 291. By the said decision, this Court issued following instructions and directions to the Motor Accident Claims Tribunal:

"I.(a) First spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit.

(b) It was further directed that thereafter, if the interest for any particular year exceeds Rs.50,000=00 separately deposit before the Tribunal the amount is liable to be deducted at source under the provisions of Section 194/A(ix) of the Income Tax Act, 1961. Such amount shall not, however, straightway, be paid over to the Income Tax department.

(c) It was further directed that the insurance company should produce before the Tribunal a statement of computation of interest by spreading the amount over the relevant financial years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000=00 and also request the Tribunal to treat the amount as a separate deposit.

II.i). It was further directed that the Tribunal shall take into account the principles laid down in the said judgment of Hon'ble High Court of Gujarat (Supra) and ensure that the amount of interest accrued each year is apportioned amongst the claimants on year to year basis.

(ii) It was further directed that if the interest payable to any claimant for any particular financial year exceeds Rs.50,000=00, the Tribunal shall permit the Insurance Companies/ owners to pay over the amount liable to be deducted at source under Section 194A3(ix) of the Income Tax Department in respect of that particular claimant for that particular year, without prejudice to the claimant's case that he is not liable to pay any income tax for that year.

(iii) It was further directed that for the financial year/s for which the interest payable to the concerned claimant does not exceed Rs.50,000=00, the Tribunal may permit such claimant to withdraw the amount deposited as per directions 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.

(iv) It was clarified in the said judgment that the amount other than the amount liable to be deducted at source under Section 194/A(ix) shall be invested/ disbursed by the Tribunal.

III. It was further directed that when the claimants make applications/ representations before the authority under the Income-Tax Act, 1961 for refund of the amount deducted under the provisions of Section 194/A(ix) of the Act, the concerned Authority shall decide such applications/ representations within six months from the

date of receipt of the applications/ representations.

6. It was, therefore, directed that in the facts and the circumstances of this case, since the Insurance Company had deducted tax on compensation under Section 194(3)(ix) of the Act by treating the entire interest amount as one lump sum amount, after giving the claimants the details of the amounts of interest spread over the relevant financial years and the break-up amongst several claimants, the insurance company shall, within one month from the date of receipt of a certified copy of the order, furnish to the claimants the certificate indicating the interest amounts computed for each year and with the breakup of the interest amounts payable to each claimant in each of those years as per the apportionment made in the order. However, it was held that thereafter, it will be open to the claimants to make applications/ representations before the appropriate income-tax authority which shall decide the same within six months from the date of receipt of the applications/ representations."

16. Learned advocate for Income-Tax Authority submitted that Insurance Company should have taken into account the direction and guidelines for spread over of the interest amount for the relevant period i.e. from the date of accident till the date of decree and if such spread over was taken into account then the amount would have been less than 50,000/- and consequently there would not be any need to deduct any amount towards tax at source.

16.1 He also submitted that Insurance Company appears to have deducted 20% from the total

principal amount and that is also not in consonance with the provision under Income Tax Act and consequently there is no illegality in the order by the Commissioner which directs the Insurance Company to deposit/ pay the amount deducted from compensation/ interest payable to claimant pursuance to the decree dated 21.02.2008.

16.2 He also clarified that the submissions by Insurance Company that at the relevant time the exemption was restricted to Rs.5,000/- and not Rs.50,000/- is also inaccurate in as much as the provision was amended in 2003 and the limit of exemption was enhanced to Rs.50,000/- since 2003.

16.3 Learned advocate for Income Tax Authority further clarified that since there is no provision for refund to the claimant, the only course open for the claimant would be to file Income Tax return and reclaim the amount deducted and deposited by the Insurance Company with

Income Tax Department.

17. From above mentioned facts and submissions by learned advocates it has emerged that either under misconception or on erroneous reading of the provision or under mistaken belief the Insurance Company deducted Rs.15,793/- from the amount payable towards compensation and interest pursuant to the decree by Workmen's Compensation Commissioner.

17.1 The interest amount awarded by learned Commissioner was required to be spread over in respect of the period from the date of accident till the date of judgment. If the said procedure had been followed then the amount payable towards interest would not invite the obligation to deduct tax at source. However, the Insurance Company failed to follow the said procedure as explained in above mentioned decision by Hon'ble Division Bench. Instead the petitioner considered entire income of Rs.1,53,938/- as interest of the

claimant for accounting year of 2008 and consequently it deducted Rs.15,793/-, from the amount payable to the claimant and deposit it with the Income Tax Department.

18. The above discussion has also brought out the fact that in entire transaction there is no fault of the claimant and therefore claimant cannot be penalised for action and mistake of the Insurance Company.

18.1 The poor workman, who is not even assessee and whose income at the relevant time was not taxable, cannot be made to undergo entire process of filing return and reclaim the amount.

19. Therefore, there is no justification to interfere with and disturb the order passed by the Commissioner. The learned Commissioner has passed the impugned order after taking into account the direction and guidelines issued by Division Bench of this Court in *Hansagauri*

Prafulchandra Ladhani and ors v. Oriental Insurance Company Limited and ors, (Supra) and, therefore also there is no justification to interfere with the said direction. Under the circumstances, the petition should fail and should be rejected. Therefore, following order is passed:

- a. The petition is not accepted for the reasons mentioned above and it is, therefore, rejected.
- b. It is, however, clarified that it will be open to the Insurance Company to follow such procedure as may be permissible under Law to seek refund of the amount i.e. Rs.15,793/-, which it has deposited with Income Tax Authority, if it is so permissible under applicable provisions and this order or the order passed by learned Commissioner would not stand in way of Insurance Company to claim the refund of the said amount in accordance with law, if permissible.

c. With aforesaid clarification and direction, the petition is disposed of. Rule is discharged. Interim relief, if any, stands vacated.

20. In this context, it is clarified that since interim relief is vacated, even otherwise, the Insurance Company would be obliged to comply the direction passed by learned Commissioner vide Order dated 23.09.2008.

(K.M.THAKER, J.)

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